

(2002) 08 AP CK 0109
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8969 of 2002

Sk. Dastagiri

APPELLANT

Vs

District Judge and Another

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 12
Constitution of India, 1950 — Article 309
General Clauses Act, 1897 — Section 15

Citation : (2003) 6 ALD 33 : (2002) 5 ALT 591

Hon'ble Judges : AR. Lakshmanan, C.J.; V. Eswaraiah, J

Bench : Division Bench

Advocate : M. Surender Rao, for the Appellant; S. Chandra Rao, S.C. for High Court, for the Respondent

Judgement

AR. Lakshmanan, C.J.—This writ petition is filed for the following relief:

.....to issue a writ, order or direction especially one in the nature of writ of mandamus declaring that revised notification No. 1/02 dated 29-1-2002 is illegal and further declare that petitioner is entitled to be considered for the post for which he applied in pursuance of the original notification bearing No. 1/02 dated 3-1-2002 and pass such order or orders as this Hon''ble Court may deem fit and proper in the circumstances of the case.

2. By the notification No. 1/2002, dated 29-1-2002 (sic. 3-1-2002) the eligibility criterion prescribed with respect to age of a candidate was that he must have completed 18 years as on 1-7-2001 and must not have completed 34 years as on 1-7-2001. Relaxation of 5 years in age was provided in respect of candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes. According to the petitioner, the respondents have no authority to modify the said notification No. 1/2002 by revising the eligibility criterion with respect to upper age from 34 years to 28 years. According to him, there is no power available to the respondents to amend, by way of G.O.Ms.No. 426, a rule which has been

framed under the proviso to Article 309 of the Constitution of India and such a rule cannot also be amended in exercise of power u/s 15 of the General Clauses Act. It is, therefore, submitted that the rules made in G.O.Ms.No. 570, dated 20-10-1993 still hold the field and, therefore, the petitioner is entitled to be considered for appointment as, according to him, he is within the age limit.

3. A counter-affidavit was filed by the Registrar General of this High Court stating that the age limit for eligibility of the candidates was modified in pursuance of the High Court fax message in Roc. No. 561/2001-Rc, dated 25-1-2002 wherein it was directed to issue further errata in respect of the notification No. 1/2002 fixing the minimum and maximum age limits for direct recruitment as 18 years and 28 years with relaxation of 5 years in respect of the reserved categories in terms of Rule 12 of the A.P. State and Subordinate Service Rules and in the light of the orders issued by the Government in G.O.Ms.No. 426, dated 7-11-2001 and further adding therein the marks to be secured in the written examination to become eligible for the oral-interview and it was dated 28-1-2002. It is further submitted by the learned counsel for the High Court that the rules framed as per G.O.Ms.No. 570, dated 20-10-1993 in exercise of the powers under the proviso to Article 309 of the Constitution of India shall be followed for all future appointments subject to G.O.Ms.No. 426, dated 7-11-2001 and the age was reduced as per the directions of this Court in terms of the said Government order and the revision of the age limit was made only after supersession of G.O.Ms.No. 570. It is further submitted that unless the High Court adopts by a specific order passed by the Hon"ble Chief Justice the rules made by the Governor or the Government cannot automatically apply to the recruitment process and other conditions of service of judicial ministerial employees.

4. While the matter stood thus, the Government of Andhra Pradesh issued G.O.Ms.No. 336 General Administration (Ser. A) Department, dated 30-7-2002, which reads as follows

The Government after careful examination of the representations received from the unemployed youth, have decided to raise the upper age limit from 28 years to 33 years for direct recruitment in the Andhra Pradesh State and Subordinate Services with effect from 24th July, 2002.

The Andhra Pradesh Public Service Commission and other recruiting agencies shall re-notify the vacancies, where the notifications have already been issued, but where the recruitment process viz., the written examination and oral examination, or both have not been held, with the above age limits. However, where the notifications have been issued and written examination/ oral examinations, or both, have already been held, they shall not be disturbed.

5. The said Government order was placed before us by the learned Counsel for the High Court which is also perused by the learned counsel for the petitioner. Under the said Government order the upper age limit of 28 years has been enhanced to 33 years for direct recruitment in the State of Andhra Pradesh with

respect to Andhra Pradesh State and Subordinate Services with effect from 24-7-2002 and the A.P. Public Service Commission and the other recruiting agencies shall have to renotify the vacancies where the notifications have already been issued. In view of the above direction the District Judge who is one of the recruiting agencies has to renotify the vacancies where the recruitment process viz., the written examination and/or oral interview had not already been held. However, where a, notification was issued and the written examination or oral interview or both have already been held they shall not be disturbed. In the present case it is represented by the learned counsel for both the parties that only a notification has been issued and no written examination or oral interview is conducted. Therefore, the District Judge who is one of the recruiting agencies shall have to renotify the vacancies on receipt of the directions from the High Court.

6. With the above observations the writ petition is disposed of.