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A.K. NAZEER SAHEB AND ORS.

v

A.P. PUBLIC SERVICE COMMISSION AND ORS.

FEBRUARY 19, 1998

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[MRS. SUJATA V. MANOHAR AND D.P. WADHWA, JJ.]

*Service Law :*

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*Assistant Directors of Sericulture—Appointment by direct recruitment—On challenge the Tribunal quashed the appointments holding that as there was no permanent post available, the appointments were illegal—On appeal, held three posts of Assistant Directors of Sericulture clearly available to be filled by direct recruitment—Thus no illegality in the appointment of three Assistant Directors of Sericulture—‘Substantive Vacancies’ are synonymous with permanent posts under the Rules—Andhra Pradesh Industries Service Rules—Andhra Pradesh State and Subordinate Service Rules : Rules 2 and 6.*

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**Appellants were directly recruited to the posts of Assistant Directors of Sericulture. Their appointments were challenged by respondents 4 to 7, Inspectors of Sericulture, inter alia on the ground that under the Andhra Pradesh Industries Service Rules if direct recruitment was to be made for three posts, there should be 15 permanent vacancies and there were not so many vacancies. The Tribunal quashed the appointments of appellants holding that as there were no permanent posts of Assistant Director of Sericulture appointment of appellants were illegal; ‘substantive vacancies’ were not synonymous with permanent posts. Appellants filed a review petition, which was also dismissed. Hence the present appeals.**

**Allowing the appeals, this Court**

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**HELD : 1. Requirements of filling up of three posts of Assistant Director, Sericulture by direct recruitment are (1) existence of more than 5 permanent posts in the cadre; and (2) possession of prescribed qualifications by the incumbent. There is no dispute that the appellants did possess the prescribed qualifications. Tribunal has noted that the State Government stated that there were 30 posts of Assistant Directors, Sericulture but it was not stated as how many of these were permanent posts though 17 posts had been continuing for the last more than 10 years. That being so under**

Explanation (amended w.e.f. 8.3.1983) to Rule 6 of the Andhra Pradesh State and Subordinate Service Rules, these 17 posts would certainly be permanent posts in the permanent cadre of Assistant Director, Sericulture and any vacancy in these posts would be a substantive vacancy to be filled by a direct recruit under Rule 6. Three vacancies for direct recruitment were thus clearly available. While notifying the three vacancies for direct recruitment the ratio fixed in sub-rule II(f) of Rule 2 of the Andhra Pradesh Industries Service Rules was followed keeping in view the availability of such number of permanent posts. As a matter of fact, it is the stand of the State Government that there were 4 posts of Assistant Director of Sericulture as against 3 which were available for direct recruitment and the Andhra Pradesh Public Service Commission was informed accordingly. Thus three posts of Assistant Directors of Sericulture were clearly available to be filled by direct recruitment to which the appellants have been rightly appointed.

[1985-G-H; 1986-A-D]

2. The Tribunal erred in holding that 'substantive vacancies' could not be regarded synonymous with permanent posts under the Rules. Construction of Andhra Pradesh Industries Service Rules and the Andhra Pradesh State and Subordinate Service Rules has to be done harmoniously and as a matter of fact there is no conflict between the two set of Rules. The three appellants, being the directly recruited Assistant Directors, Sericulture, have filled the substantive vacancies in the permanent cadre of the Assistant Directors, Sericulture. [1987-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 87-88 of 1990.

From the Judgment and Order dated 27.3.89 of the Andhra Pradesh Administrative Tribunal, Hyderabad in R. P. No. 6203 of 1988 and R.P. No. 6798 of 1988.

H.N. Salve, L.N. Rao, G.R. Krishna, (S.U.K., Sagar) and Vimal Dave for the Appellants.

T. Anil Kumar and T.V.S.N. Chari for the Respondents.

The Judgment of the Court was delivered by

**D.P. WADHWA, J.** The appellants, numbering three, were directly recruited as Assistant Directors of Sericulture under the Andhra Pradesh Industries Service Rules by the Andhra Pradesh Public Service Commission

A after following the procedure prescribed. Their appointments were challenged before the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') by Inspectors of Sericulture, being respondents 4 to 7. Under the relevant Andhra Pradesh Industries Service Rules post of Assistant Director Sericulture is a promotional post from the Inspector Sericulture. Respondents 4 to 7 who challenged the appointment of the appellants were also candidates for appointment as Assistant Directors Sericulture by direct recruitment but they were not able to qualify. They challenged the appointment of the appellants on the following three grounds:

C (1) According to the Rules, the question of direct recruitment arises only if there are more than five permanent vacancies. If direct recruitment is to be made for three posts, there should be 15 permanent vacancies. There were not so many vacancies.

D (2) It will not be in public interest to recruit candidates to the posts of Assistant Directors of Sericulture without practical experience when candidates with practical experience were available.

(3) The proposal to make direct recruitment affects the rights of the petitioners who are fully qualified and eligible for promotion.

E Grounds 2 and 3 were not considered by the Tribunal in any detail as those appeared to be meaningless. As a matter of fact respondents 4 to 7 were initially appointed as Assistant Inspectors of Sericulture and subsequently promoted as Inspectors of Sericulture. These respondents when they were appointed as Assistant Inspectors of Sericulture had not practical experience in Sericulture industry as envisaged in the Service Rules yet they were sent for 15 months training for a Diploma in Sericulture. It is not that the appellants did not possess the qualification prescribed for appointment to the post of Assistant Director of Sericulture, the only ground which found favour with the Tribunal in quashing their appointment was that there were no permanent posts of Assistant Director of Sericulture under the Rules and as such the appointment of the appellants was not legal. The impugned judgment of the Tribunal is dated March 27, 1989. The appellants filed a review petition before the Tribunal which was dismissed by the Tribunal by order dated August 9, 1989. The Tribunal affirmed its view that a substantive vacancy and a permanent post were not the same. In the impugned judgment dated March 27, 1989, the Tribunal observed as under:

H "Admittedly, according to Rules, appointment to the posts of Assistant

Sericulture Experts redesignated as Assistant Director of Sericulture A  
 can be made either by direct recruitment or by transfer from A.P.  
 Industries Subordinate Services. Appointment by direct recruitment  
 can be made only when there are moer than five permanent posts.  
 According to the Respondents, there are 30 posts of Assistant  
 Directors of Sericulture. They have not stated how many of these are B  
 permanent posts. They have however stated that 17 posts of Assistant  
 Directors are continuing for more than 10 years. In the course of the  
 hearing the learned G.P. stated that there were only two permanent  
 posts. According to the explanation below Rule 6 of the A.P. State and  
 subordinate Service Rules these are in the nature of substantive C  
 vacancies and direct recruitment can be made against such posts. But  
 the question is whether substantive vacancies are synonymous with  
 permanent posts. In the course of the hearing, the counsel for the  
 petitioner argued that a permanent vacancy is different from a  
 substantive vacancy as defined in the Explanation below Rule 6 of the  
 A.P. State and Subordinate Service Rules. On the other hand, the D  
 counsel for the Respondents argued that there is no such difference  
 and that a substantive vacancy should be deemed to be a permanent  
 post for purposes of the rules. In this connection, they referred to the  
 Webster Dictionary (Encyclopedic Edition) in which the word  
 'substantive' is said to mean permanent. It seems to me however, the E  
 explanation below Rule 6 of the State and Subordinate Service Rules  
 makes a distinction between vacancies in the permanent cadre and  
 other substantive vacancies. While all vacancies in the permanent  
 cadre are substantive it cannot be said that all substantive vacancies  
 are permanent. The term 'substantive' seems to be broader in  
 connotation than the terms 'permanent post'. The term 'substantive F  
 vacancies' cannot therefore be regarded as synonymous with permanent  
 posts. While Rule 6 of the General Rules permits direct recruitment  
 against substantive vacancies, according to the proviso (6) below  
 Rule 2 of the Industries Service Rules direct recruitment can be made  
 only when there are more than five permanent posts. It is well  
 established that where there is a difference between a General Rule G  
 and a Special Rule the latter will prevail. In the circumstance, I am of  
 the opinion that unless it is established that there are more than five  
 permanent posts as distinguished from 5 substantive vacancies direct  
 recruitment is not permissible in terms of these rules."

It is this reasoning of the Tribunal which is challenged before us and it is H

A submitted by the appellants that this led to miscarriage of justice.

At this stage we may refer to the relevant Rules on the subject .

(1) Andhra Pradesh Industries Service Rules

B Rule 1. Constitution:- The service shall consist of the following categories of Officers, namely:-

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| Assistant Sericultural<br>Expert<br>(redesignated as Assistant<br>Director of Sericulture) | 1. By direct<br>recruitments; or<br>2. By transfer from<br>category-I<br>(Sericultural Inspectors/<br>Supervisors) or Class IX of the<br>A.P. Industries Subordinate<br>Service. |
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D Provided that :

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....

F (f) Appointment to the post of Sericulture Export by direct recruitment shall be made only when there are more than 5 permanent posts. Out of every four permanent vacancies of Asstt. Sericulture Expert the third vacancy shall be filled or reserved to be filled by direct recruitment.

(Ins. by G.O.Ms. No 315, Inds, Dt. 26.4.1973 w.e.f. 26

G (2) Andhra Pradesh State and Subordinate Service Rules

Rule 6. Method of Recruitment:- Where the normal method of recruitment to any service, class or category is neither solely by direct recruitment nor solely by transfer but is both by direct recruitment and by transfer-

H (a) the proportion or order in which the special rules concerned

may require vacancies to be filled by persons recruited direct and by those recruited by transfer shall be applicable only to substantive vacancies in the permanent cadre; A

(b) a person shall be recruited direct only against a substantive vacancy in such permanent cadre and only if the vacancy is one which should be filled by a direct recruit under the special rules referred to in clause (a); B

Provided that for special reasons, direct recruitment may also be made against the temporary posts.

(Added by G.O. Ms. No.739, GA (Ser-A), Dt. 22.12.1984). C

(c) recruitment to all other vacancies shall be made by transfer:

Provided that nothing in this rule shall adversely affect any person who on the date of issue of the special rules referred to in clause (a) was a probationer in such service, class or category, as the case may be. D

*Explanation:-* For the purpose of this rule, notwithstanding anything contained in these rules or special or *ad hoc* rules 'substantive vacancies' shall mean all vacancies in the permanent cadre, all vacancies in the posts which have been in existence for more than 10 years. All vacancies in 75% of the posts which have been in existence for more than 3 years but less than 10 years and all vacancies in 50% of the posts which have been in existence for more than one year but less than 3 years. E

(G.O.Ms. No. 310, G.A. (Ser. D). Dt. 24.5.1984 w.e.f. 8-3-1983). F

Considering these Rules we think there can be hardly any scope for controversy raised in the matter. Requirements of filling up of three posts of Assistant Director Sericulture by direct recruitment are (1) Existence of more than 5 permanent posts in the cadre and (2) Possession of prescribed qualifications by the incumbent. There is no dispute that the appellants did possess the prescribed qualifications. Tribunal has noted that the State Government stated that there were 30 posts of Assistant Directors Sericulture but it was not stated as how many of these were of permanent posts though 17 posts had been continuing for the last more than 10 years. That being so under Explanation (amended w.e.f. 8.3.1983) to Rule 6 of the A.P. State and H

- A Subordinate Service Rules these 17 posts would certainly be permanent posts in the permanent cadre of Assistant Director Sericulture and any vacancy in these posts would be a substantive vacancy to be filled by a direct recruit under Rule 6. Three vacancies for direct recruitment were thus clearly available. Contention raised by the respondents 4 to 7 therefore that there were no permanent posts of Assistant Director of Sericulture and therefore the direct recruitment by the A.P. Public Service Commission was illegal was not correct.
- B Thus, while notifying the 3 vacancies for direct recruitment the ratio fixed in sub-rule II (f) of Rule 2 of the A.P. Industries Service Rules was followed keeping in view the availability of such number of permanent posts. As a matter of fact, it is the stand of the State Government that there were 4 posts
- C of Assistant Director of Sericulture as against 3 which were available for direct recruitment and the A.P. Public Service Commission was informed accordingly on October, 31, 1988. It has also been pointed out by the State Government that there are standing orders issued by GOMs No.47 dated January 31, 1987 where in it was provided that there should be at least 30% of the posts were to be earmarked for direct recruitment and that there is yet
- D another GOMs No. 739 dated 22.12.1984 which provides for direct recruitment for special reasons even against temporary posts. To this again the Tribunal was of the view that these GOMs could not be made applicable unless special rules were suitably amended.

- E The qualifications required for the post of Assistant Director Sericulture under direct recruitment are a degree in Botany, Zoology, Agriculture of any recognised University with Diploma in Sericulture of a recognised Institute. The State Government has also pointed out that the contention of the respondents 4 to 7 that it would not be in public interest to recruit Assistant Director of Sericulture by direct recruitment without having practical experience
- F was also not correct as by GOMs 315 dated April 16, 1973 in Rule 7(ii) it had been added that the candidate selected by direct recruitment to the post of Assistant Sericulture Expert (Assistant Director of Sericulture) shall during the period of probation and before posted with regular duty would undergo a course of training for a period of 6 months in Mulberry cultivation, silkworm rearing and silk reeling. As noted above post of Assistant Director of
- G Sericulture is a promotional post from Inspector of Sericulture and respondents 4 to 7 would certainly be considered for promotion in due course on merit to fill up the post of Assistant Director of Sericulture available to be filled for by promotion. There is no dispute that post of Assistant Sericulture Expert is redesignated as Assistant Director of Sericulture and in our view the
- H Tribunal unnecessarily raised this controversy. In the petition filed by the

respondents before the Tribunal they themselves sought a declaration that the rights of the petitioners and others to have their cases considered for promotion to the post of Assistant Director of Sericulture (Assistant Sericulture Expert) could not be taken away by making direct recruitment to the said posts contrary to the Statutory Rules and they had also sought quashing of the advertisement No. 3/88 dated 7.5.88 of the Andhra Pradesh Public Service Commission published in Deccan Chronicle dated 12.5.88 so far as it related to the filling up of the posts of Assistant Director of Sericulture. Thus the whole controversy which arose before the Tribunal was if the substantive vacancies were synonymous with permanent posts. The Tribunal held that the term 'substantive' seemed to be broader in connotation and substantive vacancies could not therefore be regarded as synonymous with permanent posts under the Rules. This, according to us, is not correct. The Tribunal, in our view, quite unnecessarily raised of its own difference between special and general laws. Construction of A.P. Industries Service Rules and the A.P. State and Subordinate Service Rules has to be done harmoniously and as a matter of fact there is no conflict between the two set of Rules. The appellants are right in their submission that substantive vacancies are synonymous with the vacancies in permanent posts. The three appellants, being the directly recruited Assistant Directors Sericulture, have filled the substantive vacancies in the permanent cadre of the Assistant Directors Sericulture.

In this view of the matter 3 posts of Assistant Director of Sericulture were clearly available to be filled by direct recruitment to which the appellants have been appointed. We, therefore, allow the appeals, set aside the impugned order of the Tribunal holding otherwise and would dismiss the petitions filed by the respondents 4 to 7 before the Andhra Pradesh Administrative Tribunal.

S.V.K.I.

Appeal allowed.