SECRETARY, A.P. PUBLIC SERVICE COMMISSION

v

B. SWAPNA AND ORS.

MARCH 16, 2005

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Service law :

A.P. Service Commission (Procedure) Rules—Rule 6—Selection—Wait list—Commission could select candidates from wait list—Commission could also freeze the list—Respondent placed on wait list—Fresh advertisement for recruitment—Rule amended stating that fall out vacancies to be filled up from wait list—Respondent claiming entitlement to appointment—High Court holding that amended rule was operative and directing Commission to forward name of respondent for appointment—Justification of—Held : High Court was not justified in referring to the amended Rule as after commencement of selection process, the prescribed selection criteria cannot be changed—The fact that Commission had directed fresh advertisement clearly indicates that it had freezed the wait list and did not want to give effect to it.

Selection norms—Relaxation—Scope of—Held : Criteria for selection not to be relaxed by the authorities after the commencement of the selection process.

Statutory construction—Rule—Every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect.

Appellant Service Commission invited applications for the post of Assistant PRO on 17.1.1995. The selections were finalized on 2.7.1996. Respondent no. 1 was placed in the wait list which was valid for one year. As per existing Rule 6 of the A.P. Service Commission (Procedure) Rules, Commission could select candidates from ranking list in place of those who relinquish the selection or who do not join duty within time and also new requisitions sent by appointing authority; however, the Commission had right to freeze any ranking list for reasons recorded. This Rule was amended on 30.7.1997, stating that fall out vacancies, if any, due to

A relinquishment and non-joining of selected candidates shall be notified in the next recruitment.

On 14.4.1997, competent authority had notified 14 vacancies. Respondent No. 1 claimed that he was entitled for appointment as these vacancies ought to be filled up by candidates from wait list. He then moved B Tribunal by filing an original application which was disposed of with direction to consider his appointment. Commission unsuccessfully challenged the said direction in a Writ Petition before the High Court.

In appeal to this Court, appellant-Commission contended that un-amended Rule 6 was applicable and the fact that the Commission had C directed issuance of fresh advertisement indicated that the Commission did not want the ranking list to be given effect to.

Respondent No. 1 contended that there was no material before the Tribunal or the High Court to show that the appellant-Commission had directed freezing of the ranking list.

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Allowing the appeal, the Court

HELD : 1. The High Court has committed an error in holding that the amended rule was operative. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same E is based on fair play. A person who did not apply because a certain criteria e.g. minimum percentage of marks, can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless F it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the Statute or in the Rules showing the intention to affect existing rights, the rule must be held to be prospective. [999-D-F]

G *P. Mahendran and Ors.* v. *State of Karnataka and Ors. etc.*, [1990] 1 SCC 411 and *Gopal Krishna Rath* v. *M.A.A. Baig (dead) by Lrs. and Ors.*, [1999] 1 SCC 544, relied on.

Prem Singh and Ors. v. *Haryana State Electricity Board and Ors.*, [1996] 4 SCC 319 and *State of Jammu and Kashmir and Ors.* v. *Sanjeev Kumar and* H *Ors.*, (2005) 2 Supreme 303, referred to.

2. Another aspect relevant is regarding the scope of relaxation of norms. Although Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. The power to relax the norms must be clearly spelt out and cannot otherwise be exercised.

[999-G-H; 1000-A-B]

P.K. Ramchandra Iyer and Ors. v. *Union of India and Ors.,* **[1984] SCC 141;** *State of U.P.* v *Rafiquddin and Ors.,* **[1987] Supp SCC 401;** *Maharashtra State Road Transport Corpn. and Ors.* v *Rajendra Bhimrao Mandve and Ors.,* **[2001] 10 SCC 51 and** *Dr. Krushna Chandra Sahu and Ors.* v *State of Orissa and Ors.,* **[1995] 6 SCC 1, referred to.**

3. The Commission has been given right to freeze any ranking list. The selection from the ranking list from amongst the posts advertised was limited to the cases where the selected candidates had relinquished the selection or who had not joined the duties within the given time and also new requisitions sent by the appointing authority. The Commission did not think it appropriate to make appointment from the new requisitions. The fact that the Commission had directed that fresh advertisements to be made is clearly indicative of the fact that the Commission did not want the new requisitions to be filled up by appointing from the ranking list in force. The Tribunal and the High Court were therefore not justified in holding by referring to the amended rule that the fall out vacancies were to be filled up from the ranking list. The fall out vacancies in terms of the amended notification were to be notified in the next recruitment. Case of the applicant all through has been that her claim was relatable to the 14 vacancies indented on 14.4.1997 and in particular the open category. It is not her case that Commission had directed fresh advertisement though it had not freezed the rank list. It is not disputed that there cannot be direction for fresh advertisement unless the rank list is freezed. The materials placed on record clearly show that before directing fresh advertisement, the Commission had in fact for reasons recorded directed freezing. Unfortunately, the Tribunal did not grant adequate time to the Commission to produce relevant records and the High Court proceeded on erroneous premises that the amended rules applied. Therefore, looked at from any angle, the High Court's judgment affirming Tribunal's

A **judgment cannot be maintained. [1002-B-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1775 of 2005.

From the Judgment and Order dated 29.8.2003 of the Andhra Pradesh High Court in W.P. No. 3135 of 2001.

B Guntur Prabhakar for the Appellant.

A.Subba Rao and Mrs. D.Bharathi Reddy for the Respondents.

The Judgment of the Court was delivered by

C **ARIJIT PASAYAT, J.** Leave granted.

The Andhra Pradesh Public Service Commission (hereinafter referred to as the 'Commission') calls in question legality of the judgment rendered by a Division Bench of the Andhra Pradesh High Court affirming the judgment of the Andhra Pradesh Administrative Tribunal (in short the 'Tribunal').

D The controversy involved in the present appeal arises in the following background :

The appellant-Commission by its advertisement No. 13/94 dated 17.1.1995 advertised for filling up 8 posts of Assistant Public Relations Officers. Subsequently, 7 more vacancies were advertised. Therefore, the E recruitment was made for 15 vacancies. There were 5 zones namely, Zones I to V for which selections were to be made in the following manner :

Zone	*Community*	*No. of vacancies*
F I	OC	2
	BC-B	1
II	OC	2
G	BC-B	1
III	OC	1
	BC-A	1
H IV	OC	2

	BC-B	1
	ST	1
V	OC	2
	BC-C	
		15

The short abbreviations used above are : Open category-OC, Backward Classes-BC and Scheduled Tribe-ST. As noted above, amongst backward classes there were further sub-classifications i.e. BC-A, BC-B and BC-C.

The selections were finalised on 2.7.1996.

According to respondent No. 1 (hereinafter referred to as 'applicant') she was placed at Serial No. 1 in the wait list which is disputed by the appellant-Commission. At that point of time, the Andhra Pradesh Service Commission (Procedure) Rules (in short the 'Rules') were applicable and the existing Rule 6 was as follows :

> "The ranking list prepared by the Commission for selection in a direct recruitment shall remain in force for a period of one year from the date on which the selection list is published on the Notice Board of the Commission or till the publication of the new selection list whichever is earlier. The Commission may select candidates from the ranking list in force in place of those who relinquish the selection or who do not join duty within the time given and also new requisitions sent by appointing authority. However, the Commission shall have the right to freeze any ranking list for reasons recorded."

The wait list was valid for a period of one year. There was amendment to Rule 6 w.e.f. 30.7.1997 and the amended Rule reads as follows :

> "The list of the candidates approved/selected by the Commission shall be equal to the number of vacancies only including those for reserve communities/categories notified by the Unit Officers/ Government. The fall out vacancies if any due to relinquishment and non-joining etc., of selected candidates shall be notified in the next recruitment."

A According to the applicant during the period of wait list the competent authority again notified 14 vacancies on 14.4.1997 and these vacancies ought to have been filled up by the candidates from the wait list. She claimed that she was entitled for appointment. The applicant moved the Tribunal by filing an Original Application. The same was disposed of with the following direction:

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> "In the circumstances after hearing both sides and on perusal of the material placed on record, the 1st respondent is directed to send the list of the candidates selected in Zone-IV to the Government, as indicated in the letter No. 5088/Amn.1-3/98 dated 11.5.1998 a copy of which has been marked to the Secretary, A.P. Public Service Commission without any further delay to the 3rd respondent at any rank within one week from the date of receipt of this order. The 3rd respondent thereupon should examine the same and take a decision on the appointment of the applicant respectively. The Ist respondent should examine the list to be sent relating to Zone IV of the candidates selected to the post of Assistant Public Relations Officer within a period of 3 weeks from the date of receipt of this order. The O.A. is disposed of accordingly with the above directions at the admission stage. No costs."

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The aforesaid direction as quoted above was challenged by the

E Commission by filing a Writ Petition before the High Court. The High Court disposed of the writ petition by directing the appellant to forward the name of applicant-respondent No. 1 to the Government for appointment to the concerned post. The High Court was of the view that though the Rule was amended w.e.f. 30.7.1997, it was applicable to the present dispute and the

F wait list was operative for the period of one year and even during that period if any fall out vacancy has arisen and any new appointments are to be made for fresh vacancies, they should be filled up by the candidates from the wait list.

In support of the appeal, learned counsel for the appellant-Commission

G submitted that the High Court's approach was clearly erroneous. It is a conceded position that the un-amended Rule 6 was applicable to the facts of the case. The appellant-Commission had clearly directed the Government to advertise afresh. Though the Commission had the option to select candidates from the ranking list in force in place of those who relinquish the selection or who did not join the duty within the given time and also new requisitions

H sent by appointing authority, the Commission at the relevant point of time

had the right to freeze any ranking list for reasons recorded. The fact that the Commission had directed issuance of fresh advertisement was clearly indicative of the fact that the Commission did not want the ranking list to be given effect to. This is borne out from records. In any event, there is a dispute as to whether the applicant was at serial No. 1 in the wait list.

Learned counsel for the applicant-respondent No. 1 on the other hand submitted that though it was the un-amended Rule which was applicable and not the amended rule as was held to be applicable by the High Court, yet there was no material before the Tribunal or the High Court to show that the appellant-Commission had directed freezing of the ranking list. According to him, no other person had staked any claim and even if it is conceded for the sake of arguments that respondent No. 1-applicant was not at the top of the ranking list, that would not make any difference because others had not staked any claim. Her case can be considered in the peculiar facts of the case by relaxation of norms.

There are two principles in service laws which are indisputable. Firstly, there cannot be appointment beyond the advertised number and secondly norms of selection cannot be altered after the selection process has started. In the instant case 15 posts were to be filled up. The vacancies in the different zones were as follows :

Zone IV ST 1

Zone III BC-A 1

Zone V BC-C 1

Fourteen vacancies were indented on 14.4.1997. Obviously, they were not existing vacancies on the date of advertisement i.e. 8.1.1995. The selection list was operative till 1.7.1997. The 14 vacancies which were indented on 14.4.1997 were as follows :

Zone III BC 'A'-1, OC-1

Zone IV ST-1, OC-2

Zone V BC 'C'-1, SC-1, BC 'D'-1, OC-3

Zone VI SC-1, OC-1, BC 'D'-1

A As per amended Rule 6, the fall out vacancies if any due to relinquishment and non-joining etc. of selected candidates are to be notified in the next recruitment.

The legal position so far as the case of existing vacancies, notified vacancies and future vacancies has been set out by this Court in several B decisions. In *Prem Singh and Ors.* v. *Haryana State Electricity Board and Ors.*, [1996] 4 SCC 319, in paragraphs 25 and 26 it was laid down as follows:

> "25. From the above discussion of the case-law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not C for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant D thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of E persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.
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> 26. In the present case, as against the 62 advertised posts the Board made appointments on 138 posts. The selection process was started F for 62 clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, strictly speaking, the Board was not justified in making more than 62 appointments pursuant to the advertisement published on 2-11-1991 and the selection process which followed thereafter. But as the Board could have taken into account G not only the actual vacancies but also vacancies which were likely to arise because of retirement etc. by the time the selection process was completed it would not be just and equitable to invalidate all the appointments made on posts in excess of 62. However, the appointments which were made against future vacancies - in this case on posts which were newly created - must be regarded as invalid. As H stated earlier, after the selection process had started 13 posts had

become vacant because of retirement and 12 because of deaths. The vacancies which were likely to arise as a result of retirement could have been reasonably anticipated by the Board. The Board through oversight had not taken them into consideration while a requisition was made for filling up 62 posts. Even with respect to the appointments made against vacancies which arose because of deaths, a lenient view can be taken and on consideration of expediency and equity they need not be quashed. Therefore, in view of the special facts and circumstances of this case we do not think it proper to invalidate the appointments made on those 25 additional posts. But the appointments made by the Board on posts beyond 87 are held invalid. Though the High Court was right in the view it has taken, we modify its order to the aforesaid extent. These appeals are allowed accordingly. No order as to costs."

The view was recently re-iterated in *State of Jammu and Kashmir and Ors.* v. *Sanjeev Kumar and Ors.*, (2005) 2 Supreme 303.

The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for the applicant-respondent No. 1 it was un-amended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criteria e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the Statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If the Rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See *P. Mahendran and Ors.* v. *State of Karnataka and Ors. etc.*, [1990] 1 SCC 411 and *Gopal Krishna Rath* v. *M.A.A. Baig (dead) by Lrs. and Ors.*, [1999] 1 SCC 544).

Another aspect which this Court has highlighted is scope for relaxation of norms. Although Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily

A established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In *P.K. Ramchandra Iyer and Ors.* v. *Union of India and Ors.*, [1984] 2 SCC 141 this Court held that once it is established that there is no power to relax essential qualification, the entire B process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.

In *State of U.P.* v. *Rafiquddin and Ors.*, [1987] Supp SCC 401, it was *inter alia*, held as follows :

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> "Before we close we would like to refer certain aspects which came to our notice during the hearing of the case relating to the functioning of the Public Service Commission, selection of candidates and their appointment to the Judicial Service. We were distressed to find that the Public Service Commission has been changing the norms fixed D by it for considering the suitability of candidates at the behest of the State Government after the declaration of results. We have noticed that while making selection for appointment to the U.P. Judicial Service the Commission had initially fixed 40 per cent aggregate marks and minimum 35 per cent marks for viva voce test and on that basis it had recommended list of 46 candidates only. Later on at the instance of E the State Government it reduced the standard of 40 per cent marks in aggregate to 35 per cent and on that basis it forwarded a list of 33 candidates to the government for appointment to the service. Again at the behest of the State Government and with a view to implement the decision of the high level committee consisting of Chief Justice, F Chief Minister and the Chairman of the Commission forwarded name of 37 candidates in 1974 ignoring the norms fixed by it for judging the suitability of candidates. The Commission is an independent expert body. It has to act in an independent manner in making the selection on the prescribed norms. It may consult the State Government and the High Court in prescribing the norms for judging the suitability of G candidates if no norms are prescribed in the Rules. Once the Commission determines the norms and makes selection on the conclusion of the competitive examination and submits list of the suitable candidates to the government it should not reopen the selection by lowering down the norms at the instance of the Government. If the H practice of revising the result of competitive examination by changing

norms is followed there will be confusion and the people will lose faith in the institution of Public Service Commission and the authenticity of selection."

In *Maharashtra State Road Transport Corpn. and Ors.* v. *Rajendra Bhimrao Mandve and Ors.*, [2001] 10 SCC 51, it was held as under :

"It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court, to the extent it pronounced upon the invalidity of the circular orders dated 26.6.1996, does not merit acceptance in our hand and the same are set aside."

In *Dr. Krushna Chandra Sahu and Ors.* v. *State of Orissa and Ors.*, [1995] 6 SCC 1, it was held as under :

"34. The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In *P.K. Ramachandra Iyer* v. *Union of India*, [1984] 2 SCC 141 it was observed (SCC pp.180-81, para 44)

"By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm."

35. Similarly, in *Umesh Chandra Shukla* v. *Union of India*, [1985] 3 SCC 721 it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in *Durgacharan Misra* v. *State of Orissa*, [1987] 4 SCC 646 and the limitations of the Selection Committee were pointed out that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva voce.

36. It may be pointed out that rule-making function under Article 309 is legislative and not executive as was laid down by this Court in *B.S. Yadav* v. *State of Haryana*, [1980] Supp SCC 524. For this reason

A also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection."

The Commission has been given right to freeze any ranking list. The selection from the ranking list from amongst the posts advertised was limited to the B cases where the selected candidates had relinquished the selection or who had not joined the duties within the given time and also new requisitions sent by the appointing authority. The Commission did not think it appropriate to make appointment from the new requisitions. The fact that the Commission had directed that fresh advertisements were to be made is clearly indicative C of the fact that the Commission did not want the new requisitions were to be filled up by appointing from the ranking list in force. The Tribunal and the High Court were therefore not justified in holding by referring to the amended rule that the fall out vacancies were to be filled up from the ranking list. The fall out vacancies in terms of the amended notification were to be notified in the next recruitment. Case of the applicant all through has been that her claim D was relatable to the 14 vacancies indented on 14.4.1997 and in particular the open category. It is not her case that Commission had directed fresh advertisement though it had not freezed the rank list. It is not disputed that there cannot be direction for fresh advertisement unless the rank list is freezed. The materials placed on record clearly show that before directing fresh E advertisement, the Commission had in fact for reasons recorded directed freezing. Unfortunately, the Tribunal did not grant adequate time to the Commission to produce relevant records and the High Court proceeded on erroneous premises that the amended rules applied. Therefore, looked at from any angle, the High Court's judgment affirming Tribunal's judgment cannot be maintained. The same is set aside. The appeal is allowed with no order as F to costs.

D.G. Appeal allowed.