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MOHD. SIDDIQ ALI

v.

HIGH COURT OF A.P. THROUGH REGISTRAR AND ORS.

OCTOBER 24, 2005

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[R.C. LAHOTI, C.J., G.P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.]

*Service Law:*

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*Andhra Pradesh State and Subordinate Service Rules—Rule 22-A(2)(As amended by G.O.Ms. No.237 dated 28.5.1996)—Appointment—To the post of Distt. Munsiff—Of women candidate—Applying policy of reservation provided in the Rule—Appointment challenged—Plea that the Rule did not provide for reservation but only a rule of preference—Dismissal of writ petition—On appeal, held: In view of amendment of the Rule providing for first time reservation for women, the Rule cannot be said to have been wrongly applied.*

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Appellants challenged appointment of some women candidates and candidates belonging to Scheduled Castes and Scheduled Tribes to the posts of District Munsiff, by filing two Writ Petitions. Prior to filing the present Writ Petitions, a Writ Petition challenging the same appointments was filed wherein (*Mohd. Iqbal Ahmed v. High Court of A.P., (1998) 5 ALT 385*) High Court considering amendments in Rule 22-A(2) of A.P. State and Subordinate Service Rules held that the Rule provided for first time reservation for women candidates. High Court dismissed the petitions. One of the Writ Petitions was dismissed holding that one of the petitioners had no chance of selection even if his plea was accepted. Hence the present appeals. Fresh Writ Petitions were also filed in this Court challenging the appointments.

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In appeal to this Court, appellants contended that selection of women candidates after applying Rules 22-A(2) of A.P. State and Subordinate Service Rules for their reservation was illegal, as the Rule did not provide for a reservation but merely laid down rule of preference.

Dismissing the appeals and petitions, the Court

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**HELD:** 1. In view of the amendment of Rule 22-A(2) of A.P. State and Subordinate Services Rules providing for first time reservation for the women

candidates, it cannot be said that the Rule was wrongly applied as it did not provide for reservation in favour of women, but merely laid down rule of preference. [484-D] **A**

*Government of A.P. v. P.B. Vijyakumar and Anr.*, [1995] 4 SCC 520, distinguished. **B**

2. It cannot be said that Writ Petition could not have been dismissed on the ground of laches. In the present case the persons selected had already joined as District Munsiffs long back and the challenge has been raised to their selection after the decision had been rendered by the High Court in *Mohd. Iqbal Ahmad's* case. Therefore, there is no infirmity in the order passed by the High Court. [485-B] **C**

*R.S. Deodhar v. State of Maharashtra*, AIR (1974) SC 259, distinguished.

*Mohd. Iqbal Ahmad v. High Court of A.P.*, (1998) 5 ALT 385, referred to. **D**

3. In respect of the other appeal, High Court has recorded a finding that the appellant had no chance of selection even if the contention raised by him was accepted. Nothing has been brought on record to show that the reasons given by the High Court in dismissing his Writ Petition are incorrect. [485-C] **E**

4. Writ Petitions which have been directly filed in this Court under Article 32 of the Constitution are highly belated and are liable to be dismissed on the ground of laches. [485-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3006 of 2001. **F**

From the Judgment and Order dated 18.1.99 of the Andhra Pradesh High Court in W.P. No. 35876 of 1998.

WITH

W.P. (C) No. 504/99, C.A. No. 3007/2001, W.P. (C) Nos. 22, 554 and 555 of 2001. **G**

H.S. Gururaja Rao, G. Seshagiri, A. Raghunath, A.T.M. Sampath, Mrs. P.S. Shanthi, Mrs. R. Meena Kumari, B.D. Sharma, (NP) and G. Ramakrishna Prasad for the Appellant. **H**

A B. Sridhar, K. Ram Kumar and T.V. Ratnam for the Respondent.

The Judgment of the Court was delivered by

B **G.P. MATHUR, J.** 1. The issue raised in the Civil Appeals and Writ Petitions which have been filed under Article 32 of the Constitution is same and, therefore, they are being disposed of by a common order.

2. The High Court of Andhra Pradesh issued a notification on 23.10.1996 for making appointments to the posts of District Munsiff and the relevant part of the notification which has a bearing on the controversy in dispute is reproduced below :

C “Notification

For appointment to the post of District Munsiffs.

D Applications are invited for 200 posts of District Munsiffs of which 27 by limited Recruitment-backlog vacancies and 173 by General Recruitment in the A.P. State Judicial Services.

VACANCY POSITION :

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E Note : 1. The General Recruitment vacancies are subject to the rule of Spl. Representation under Rule 10 of the Spl. Rules for A.P. State Judicial Service and also Rule 22(A)(2) of the A.P. State and Subordinate Service Rules.

F 2. The High Court reserves the right to increase or decrease the number of vacancies after issue of this notification, if necessary.”

G After a written examination was held, candidates were called for interview keeping in view the number of vacancies and the result was declared on 18.3.1997. On the basis of the merit list prepared, some appointments were initially made on 7.4.1998. Mohd. Siddiq Ali (appellant in C.A. No.3006 of 2001) filed Writ Petition No.35876 of 1998 challenging the selection and appointment of some women candidates and candidates belonging to Scheduled Castes and Scheduled Tribes. The writ petition was dismissed in *limine* by a Division Bench of the High Court (B. Subhashan Reddy and Y.V. Narayana, JJ) on 18.1.1999 and the order passed by the Court reads as under:

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“This writ petition challenges the women reservation in the matter of selection of Munsiff Magistrates as also backlog for Scheduled Castes and Scheduled Tribes candidates.

In so far as backlog of SC and ST candidates is concerned, it is a well settled law that such a backlog is permissible under the Constitution Scheme. In so far as women reservation is concerned, a Division Bench of this Court by judgment dt. 31.8.1998 in W.P. 18307/98 and batch had maintained women reservation on the ground of the same being not challenged and that challenge could not sustain in auxiliary proceedings. The Division Bench, however, has set aside the action regarding carry-forward in the matter of women candidates. Taking a clue from the judgment of the said Division Bench that the action in providing reservation to women was not challenged, this writ petition has been filed, but the same is hit by laches for the reason that the notification was issued far back in 1996, selection process went through and selections have been finalised and appointments have been made.

In the circumstances, this writ petition is dismissed. No costs.”

Civil Appeal No.3006 of 2001 has been filed challenging the aforesaid order of the High Court.

3. Another writ petition being Writ Petition No.32021 of 1998 was filed by S. Sreeramulu and D.D.V.S.N. Prasad challenging the same selection and appointment of women candidates. The writ petition was dismissed by a Division Bench (P. Venkatarama Reddi and Bilal Nazki, JJ) on 2.12.1998 and the order passed by the Court reads as under :

“We are not inclined at this distance of time to entertain this Writ Petition directed against the selection of candidates for the posts of District Munsiffs which was finalised long back and pursuant to which appointment orders were issued. That apart, on the basis of the information furnished by the panel counsel for the High Court, the 1st petitioner has no chance of selection even if his contention is accepted. The writ petition in so far as the 2nd petitioner is concerned, is dismissed as he has separate cause of action and he should have filed a separate writ petition. In fact, it is noticed that the affidavit is filed by the 1st petitioner only. The writ petition is, therefore, dismissed at the admission stage.”

A Civil Appeal No.3007 of 2001 has been filed challenging the aforesaid order of the High Court.

B 4. Learned counsel for the appellant has submitted that Rule 22-A(2) of the Andhra Pradesh State and Subordinate Service Rules was wrongly applied while making the selection to the post of District Munsiff. He has further contended that Rule 22-A(2) of the aforesaid Rules did not provide for a reservation to the extent of 30% in favour of women but merely laid down a rule of preference and, therefore, the selection made of women candidates after applying a policy of reservation in their favour is wholly illegal. The appellant in civil appeal no.3006 of 2001 has filed a copy of A.P. State and Subordinate Rules in the additional documents filed in I.A. No.7 of 2005 and Rule 22-A of the Rules is reproduced below :

C “22-A. Notwithstanding anything contained in these Rules or Special or *Ad hoc* Rules

D (1) In the matter of direct recruitment to posts for which women are better suited than men, preference shall be given to women :

Provided that such absolute preference to women shall not result in total exclusion of men, in any category of posts.

E (2) In the matter of direct recruitment to posts for which women and men are equally suited, other things being equal, preference shall be given to women and they shall be selected to an extent of atleast 30% of the posts in each category of O.C., B.C., S.C., and S.T. quota.

F (3) In the matter of direct recruitment to posts which are reserved exclusively for being filled by women they shall be filled by women only.”

G 5. Learned counsel has submitted that the aforesaid Rule came up for consideration before this Court in Government of *A.P. v. P.B. Vijayakumar and Anr.*, [1995] 4 SCC 520 and it was held therein that the preference contemplated by the Rule will come into operation only when the candidates obtain the same number of marks as the Rule uses the expression “other things being equal”. This position was made clear in the judgment and the relevant part of headnote (B) of the report on which great emphasis was laid during the course of arguments is being reproduced below :

H “Rule 22-A(2) of the A.P. State and Subordinate Service Rules does

not provide reservation for women in the normal sense of the term. It is a rule for a very limited affirmative action. The preference contemplated under Rule 22-A(2) will come into operation at the initial stage when in the selection test for the post in question, candidates obtain the same number of marks or are found to be equally meritorious. Rule 22-A(2) prescribes a minimum preference of 30% for women, clearly contemplating that for the remaining posts also, if women candidates are available and can be selected on the basis of other criteria of selection among equals, which are applied to the remaining candidates, they can also be selected. The phrase "other things being equal" does not refer to these other norms for choosing from out of equally meritorious persons. The 30% rule is also not inflexible. In a situation where sufficient number of women are not available, preference that may be given to them could be less than 30%. The rule is thus within the ambit of Article 15(3) and is not violative of Articles 16(2) and 16(4) which have to be read harmoniously with Articles 15(1) and 15(3)."

6. We have considered the submission made by learned counsel for the appellant and have examined the record. It is rather unfortunate that what is placed on record is the unamended A.P. State and Subordinate Rules and arguments have been advanced on its basis. Rule 22-A(2) of the aforesaid Rules has undergone several amendments and this position was noticed by a Division Bench of A.P. High Court (P. Venkatarama Reddi and R.M. Bapat, JJ) in Writ Petition No.18307 of 1998 filed by Modh. Iqbal and Ors. wherein the same selection of District Munsiff was challenged. The judgment in this case was delivered on 31.8.1998 i.e. prior to the filing of the two writ petitions in the High Court and the same is reported in 1998 (5) ALD 590. The amendment in the Rules were considered in para 5 of the judgment which reads as under:

"5. Sub-rule (2) of Rule 22-A of A.P. State and Subordinate Service Rules (hereinafter referred to as APSS Rules) as amended by G.O.Ms.No.237 dated 28.5.1996 provided for the first time reservation for women to the extent of 33-1/3% of posts in each category i.e., OCs, BCs, SCs, STs, Physically Handicapped and Ex-servicemen with effect from 8.3.1996. This was in modification of the earlier rule of preference in favour of women. It is laid down by means of a proviso that if sufficient number of women candidates are not available, the vacancies shall be filled by men. The Rule in the same form was retained when the APSS Rules were further amended by G.O. No.436, dated 15.10.1996.

A A few months thereafter, Rule 22-A(2) had undergone a further change by G.O. No.65, dated 15.2.1997. The proviso to Rule 22-A(2) was deleted. Simultaneously, there was a corresponding amendment to Rule 22 placing the women candidates on par with SCs, STs, BCs and Physically handicapped candidates for the purposes of application of the procedure for limited requirement and carry forward of vacancies.

B Note (2) was added to Rule 22 by which it was provided that the “principle of carry forward of vacancies in respect of women shall be with effect from 28.10.1996”. Note (3) provided for application of roster points for women candidates with effect from 1.8.1996.”

C The Bench struck down the action of the respondents in carrying forward the unfilled vacancies reserved for women candidates, while not disturbing the selections and appointments of women candidates already made on the ground that Rule 22-A(2) which the High Court purported to adopt in the recruitment notification did not contain any principle of carrying forward of vacancies relating to women candidates. A direction was accordingly issued that those vacancies should be filled in by men candidates in the order of merit and subject to the observance of roster point and the rules of reservation applicable to Scheduled Castes, Scheduled Tribes and backward classes. In view of the amendment of the Rules, the contention raised by learned counsel for the appellant has no merit at all and has to be rejected.

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E 7. In Civil Appeal No.3006 of 2001, the writ petition was dismissed by the High Court on the ground that though the notification had been issued on 23.10.1996, but the writ petition wherein reservation in favour of women was challenged was filed in November, 1998 and, therefore, the writ petition was highly belated. Learned counsel for the appellant has submitted that the writ petition should not have been dismissed on the ground of laches. In support of his submission learned counsel has placed reliance on *R.S. Deodhar v. State of Maharashtra*, AIR (1974) SC 259, wherein it has been held that the rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the

F Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case. On the strength of the aforesaid authority it is submitted that the High Court has erred in dismissing the writ petition on the ground of laches. We are unable to accept the contention raised. In the authority cited, the dispute related to *inter se*

G seniority of Mamlatdars/Tehsildars in the newly constituted State of Bombay

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by virtue of the provisions of the States Reorganization Act, 1956. The inter se seniority of persons holding the same rank has a great bearing at the stage of promotion to a higher post and in such a situation it was held that in the facts and circumstances of the case, the writ petition could not be dismissed on the ground of laches. In the present case the persons selected had already joined as District Munsiffs long back and the challenge has been raised to their selection after the decision had been rendered by the A.P. High Court in Writ Petition No.18307 of 1998 (*Mohd. Iqbal Ahmad and Ors. v. High Court of A.P.*) on 31.8.1998. We, therefore, do not find any infirmity in the order passed by the High Court. A B

8. In Civil Appeal No.3007 of 2001, the High Court has recorded a finding that the appellants S. Sreeramulu had no chance of selection even if the contention raised by him was accepted. Nothing has been brought on record to show that the reasons given by the High Court in dismissing his writ petition are incorrect. We, therefore, do not find any merit in the appeal. C

9. Regarding the writ petitions which have been directly filed in this Court under Article 32 of the Constitution, it may be noted that Writ Petition (C) No.504 of 1999 was filed on 6.11.1999, Writ Petition (C) No.22 of 2001 was filed on 8.11.2000, Writ Petition (C) No.554 of 2001 and Writ Petition (C) No.555 of 2001 were filed on 19.10.2001. We are of the opinion that these writ petitions, wherein challenge has been made to the notification issued by the High Court on 23.10.1996, are highly belated and are liable to be dismissed on the ground of laches. D E

10. For the reasons discussed above, all the Civil Appeals and Writ Petitions are dismissed.

K.K.T.

Appeals and petitions dismissed. F