

A MARRIPATI NAGARAJA AND ORS.
v.
THE GOVERNMENT OF ANDHRA PRADESH AND ORS.

OCTOBER 12, 2007

B [S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Service Law:

C *Reservation—For women—In direct recruitment—Not specified
in the Advertisement—By subsequent Government Order, provided to
the extent of 30% with retrospective effect—By further Notification
percentage of reservation increased to 33^{1/3}% - Permissibility to such
reservation—Held: Reservation permissible—Rule providing
D reservation to women already existing on the date, the posts were
advertised—Subsequent Notification only increased percentage for
such reservation—State has the power to make Rules with retrospective
effect and retro-active operation—The rule providing reservation
E having been given retrospective effect and particularly when its
constitutionality has not been questioned would be applicable—
Andhra Pradesh State and Subordinate Service Rules—r. 22-A—
Constitution of India, 1950—Article 309 Proviso—Retrospective
Operation.*

F *Recruitment—Screening test—Second screening test with the
approval of Administrative Tribunal—Candidates challenging selection
process on the ground that preparation time given for second screening
test was very short—Held: Selection process not being discriminatory,
could not be set aside on this ground alone.*

G **Andhra Pradesh Public Service commission issued Notification
inviting applications for recruitment to various posts including the posts
of Assistant Director of Agriculture. No stipulations were made in the
Notification, regarding reservation for the women.**

Appellants had applied for the post of Assistant Director, in terms of the Notification. About 510 candidates appeared for screening test on 27.12.1992. A

Appellants-candidates filed original application on different grounds which was dismissed by the Tribunal. During pendency of the application, State had issued Government Order on 6.10.1995 providing for reservation for women candidates to the extent of 30% in the matter of direct recruitment with retrospective effect from 2.1.1984. By another Notification, dated 28.5.1996, State increased the percentage of reservation to 33 ^{1/3}%. B C

An application by the Commission seeking short-listing of the candidates was allowed by the Tribunal. As per direction of the Tribunal, a Notification for conducting a fresh screening test was issued on 12.12.2000 whereby second screening test of 510 candidates was to be conducted on 7.1.2001. D

Candidates filed original applications on the ground that reservation for women could not have been provided in terms of Notification dated 28.5.1996 and that a very limited time had been given to them for appearing in the second screening test. In the meantime Commission interviewed the suitable candidates. The applications were dismissed by the Tribunal holding that the Selections had to revised restricting the reservation for women to the extent of 30%. E

Writ Petitions by the candidates as well as the Commission, challenging the order of the Tribunal, were dismissed. Hence the present appeals by the candidates and also by the Commission. F

Dismissing the appeals of the candidates and allowing that of the Commission, the Court G

HELD: 1.1. It is well settled that the rules which would be applicable for selecting the candidates would be the one which were prevailing at the time of the notification. It is also equally well settled that the State may, subject to constitutional limitations, amend the rule with retrospective effect. [Para 12] [513-A, B] H

A 1.2. The women candidates, in terms of Rule 22-A of Andhra Pradesh State and subordinate Service Rules, were, therefore, only entitled to preference. By reason of the said notification merely, the percentage has been increased from 30% to 33^{1/3}%. It has been given a retrospective effect; as the existing sub-rule (2) of Rule 22-A was substituted. By reason of the said Notification, no existing right of any person has been taken away. In fact, as the selection process was not over, the question of applicability of the said Notification would have fallen for consideration only when a final selection list was to be made and not prior thereto. [Para 13] [513-F, G]

C 1.3. The State, in exercise of its power conferred upon it under the proviso appended to Article 309 of the Constitution of India, is entitled to make rules with retrospective effect and retro-active operation. Ordinarily, in absence of any rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied. But if some rule has been given a retrospective effect which is within the domain of the State, unless the same is set aside as being unconstitutional, the consequences flowing therefrom shall ensue. In such an event, the applicable rule would not be the rule which was existing but the one which had been validly brought on the statute book from an anterior date. The Tribunal and the High Court, therefore, committed an error in opining otherwise, particularly when the constitutionality of the said rule was not in question.

[Para 14] [514-A, B, C]

F *N.T. Devin Katti v. Karnataka Public Service Commission*, [1990] 3 SCC 157, relied on.

G 2. The fact that candidates had been given only seven days time for making preparation to appear in the second screening test, cannot, give rise to a ground for setting aside the entire selection process. The Tribunal did not make any discrimination. One screening test had already been held. The number of candidates appeared in the first screening test was 510. The Commission obtained the permission of the Tribunal for holding the second screening test. All the candidates were given the same time for preparation. Only because the appellants

herein were employees at the relevant time, the same by itself could not confer on them any special privilege to ask for an extended time. They had no legal right in relation thereto. Appellants had appeared at the examination without any demur. They did not question the validity of the said question of fixing of the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process. [Para 17] [515-E, F, G; 516-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4868 of 2007.

From the Judgment & Order dated 22.1.2004 of the High Court of Judicature of Andhra Pradesh at Hyderabad in W.P. No. 16970/2003.

WITH

C.A. Nos. 4869-4873 of 2007.

C.S.N. Mohan Rao, P. Veera Reddy and Guntur Prabhakar for the Appellants.

D. Bharathi Reddy, D. Rama Krishna Reddy, Asha G. Nair, R. Santhan Krishnan, K. Radha Rani, Praveen K. Pandey, P. Vijaya Kumar, D. Mahesh Babu, Manoj Saxena, Rajnish Kr. Singh and Rahul Shukla for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Andhra Pradesh Public Service Commission, on the advice of the State of Andhra Pradesh, issued a notification on or about 1.10.1992 inviting applications for recruitment to various posts including 34 posts in the category of Assistant Director of Agriculture in the Andhra Pradesh Agricultural Service. Although in the said notification stipulations were made in respect of grant of reservation for women to the extent of 30%, no such stipulation was made in respect of the vacancies in the category of Assistant Director of Agriculture. This appeal involves the question of reservation of women in the said category.

3. Appellants herein had been working as Agricultural Officer in

A Andhra Pradesh Agricultural Service. They, in terms of the said notification, applied for the said posts. A screening test was to be held therefor. About 510 candidates appeared for the screening test on 27.12.1992.

B 4. Several original applications were filed before the Andhra Pradesh Administrative Tribunals claiming different reliefs and on different grounds. Appellant herein filed an original application which was registered as OA No.6451 of 1992 questioning the carry forward of vacancies from the year 1976; the omission to make zonal reservation; prescription of minimum and maximum age limits by way of eligibility criteria as a result whereof, allegedly, some of the agricultural officers were deprived of their right to apply for the posts. Indisputably, interim orders were passed in January 1993 by the Tribunal which remained in force till the disposal of the said original applications.

C 5. The State of Andhra Pradesh issued GOMs No.928 G.A.D. on D or about 6.10.1995 providing for reservations of women candidates to the extent of 30% in the matter of direct recruitment with retrospective effect from 2.1.1984. By reason of another Notification issued on 28.5.1996, the percentage of reservation for women was increased to 33^{1/30}%. Original Applications filed by the petitioners as also those of other E employees were dismissed by the Tribunal on 23.11.1998.

F 6. An application filed by the Andhra Pradesh Public Service Commission to short-list the candidates was allowed by the Tribunal by an order dated 14.11.2000 by holding a fresh screening test for the 510 candidates who had appeared therein on 27.12.1992 and to finalise the result. A Notification for conducting a fresh screening test was issued on 12.12.2000 pursuant whereto a second screening test was conducted on 7.1.2001. Appellant, although appeared, did not pass the said test.

G 7. *Inter alia*, on the premise that a very limited time had been granted to them for appearing in the second screening test as also on the ground that no reservation for women could be provided for in terms of the said Notification dated 28.5.1996, an original application marked as OA No. 83 of 2001 was filed by the appellants before the Tribunal on 8.1.2001. No order of stay was passed therein.

H

8. The Public Service Commission interviewed the candidates on 8.1.2001 and 9.1.2001 who had been found suitable therefor. A

An interim order was passed by the Tribunal only on 9.1.2001. However, by order dated 1.8.2003, the original applications were dismissed by the Tribunal holding that the selections made by the Commission did not call for any interference except to the extent that the selections have to be revised restricting the reservation in favour of women to the extent of 30% and wherever vacancies which were reserved to be filled by women candidates could not be filled for want of women candidates, they should be filled up by men in terms of the rules existing at the time of notification. B
C

9. Writ petition filed by the appellants questioning the same was dismissed. A writ application was also filed by the Andhra Pradesh Public Service Commission challenging the decision of the Tribunal restricting reservation for women to 30% instead of 33^{1/3}%. By reason of the impugned judgment both the writ petitions have been dismissed. D

10. Not only the original applicants but the Andhra Pradesh Public Service Commission also are, thus, before us.

11. Mr. Mohan Rao, learned counsel appearing on behalf of the appellant, would submit that keeping in view the fact that for the purpose of giving an opportunity to the appellants herein for appearance in the second test, only a few days' time had been granted by the Commission, the same must be held to be wholly arbitrary. It was furthermore contended that by reason of any notification issued subsequent to the date of advertisement, a provision for reservation of women could not have been made. E
F

12. Learned counsel appearing on behalf of the Andhra Pradesh Public Service Commission, on the other hand, submitted that as on the date of publication of the notification, selection process was not over, the Tribunal and consequently the High Court committed an error in opining that reservation for women should have been kept confined to 30% only. G

The Notification being GOMs No.928 dated 6.10.1995 reads thus: H

A "In exercise of the powers conferred by the proviso to Article 309 read with clause (4) of Article 16 and Article 335 of the Constitution of India, the Governor of Andhra Pradesh hereby makes the following amendment to the Andhra Pradesh State and Subordinate Service Rules.

B 2. The amendments hereby made shall be deemed to have come into force in so far as it relates to the reservation to the extent of 30% of posts:-

C (a) with effect from the 2nd January, 1984 to each category of O.C., S.C., S.T., and to the unclassified B.Cs; and

(b) with effect from the 17th October, 1990 to the categories of B.Cs as classified into groups the physically handicapped and Ex-servicemen quota.

D AMENDMENT

In the Andhra Pradesh State and Subordinate Services Rules, for Sub-rule (2) of Rule 22-A, the following shall be substituted namely:-

E "(2) In the matter of direct recruitment to posts for which women and men are equally suited, there shall be reservation to women to an extent of 30% of the posts in each category of O.C., B.C-A, B.C.B., B.C.C., B.C.D., S.C., S.T. and physically handicapped and Ex-Servicemen quota.

F Provided that if sufficient number of women candidates are not available the vacancies shall be filled in by men."

G *EXPLANATION:* "It is hereby clarified that all sections made in accordance with sub-rule (2) prior to its amendment shall be and shall be deemed always to have been made in accordance with this rule; and shall not entitle any person to enforce 30% reservation merely on the ground that this amendment is made with retrospective effect."

H (BY ORDER AND IN THE NAME OF THE GOVERNOR OF

ANDHRA PRADESH)”

A

It is now a well settled principle of law that the rules which would be applicable for selecting the candidates would be the one which were prevailing at the time of the notification. It is also equally well settled that the State may, subject to constitutional limitations, amend the rule with retrospective effect. Rule 22-A which was applicable as on the date of the said notification reads as under :

B

“Rule 22-A. Notwithstanding anything contained in these Rules or Special or Ad hoc Rules,—

C

(1) In the matter of direct recruitment to posts for which women are better suited than men, preference shall be given to women : (G.O.Ms. No.472, G.A., Dt.11.10.85)

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

D

(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 at least 30% of the posts in each category of O.C., B.C., S.C. and S.T. quota.

E

(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 (Vide G.O.Ms. 691, G.A. (Ser-D), Dt.22.11.1984, w.e.f. 2.1.1984)”

F

13. The women candidates, in terms thereof, were, therefore, only entitled to preference. By reason of the said notification merely, the percentage has been increased from 30% to 33^{1/3}%. It has been given a retrospective effect; as the existing sub-rule (2) of Rule 22-A was substituted. By reason of the said Notification, no existing right of any person has been taken away. In fact, as the selection process was not over, the question of applicability of the said notification would have fallen for consideration only when a final selection list was to be made and not prior thereto.

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A 14. The State, in exercise of its power conferred upon it under the
proviso appended to Article 309 of the Constitution of India, is entitled
to make rules with retrospective effect and retro-active operation.
Ordinarily, in absence of any rule and that too a rule which was expressly
given a retrospective effect, the rules prevailing as on the date of the
B notification are to be applied. But if some rule has been given a
retrospective effect which is within the domain of the State, unless the
same is set aside as being unconstitutional, the consequences flowing
therefrom shall ensure. In such an event, the applicable rule would not be
the rule which was existing but the one which had been validly brought
C on the statute book from an anterior date. The Tribunal and the High
Court, therefore, in our opinion, committed an error in opining otherwise,
particularly when the constitutionality of the said rule was not in question.

D 15. In *N.T. Devin Katti v. Karnataka Public Service
Commission*, [1990] 3 SCC 157, this Court categorically held :

E “11. There is yet another aspect of the question. Where
advertisement is issued inviting applications for direct recruitment
to a category of posts, and the advertisement expressly states that
selection shall be made in accordance with the existing rules or
government orders, and if it further indicates the extent of
reservations in favour of various categories, the selection of
candidates in such a case must be made in accordance with the
then existing rules and government orders. Candidates who apply,
and undergo written or viva voce test acquire vested right for being
F considered for selection in accordance with the terms and
conditions contained in the advertisement, unless the advertisement
itself indicates a contrary intention. Generally, a candidate has right
to be considered in accordance with the terms and conditions set
out in the advertisement as his right crystallises on the date of
G publication of advertisement, however he has no absolute right in
the matter. If the recruitment Rules are amended retrospectively
during the pendency of selection, in that event selection must be
held in accordance with the amended Rules. Whether the Rules
have retrospective effect or not, primarily depends upon the
H language of the Rules and its construction to ascertain the legislative

intent. The legislative intent is ascertained either by express provision A
or by necessary implication; if the amended Rules are not
retrospective in nature the selection must be regulated in
accordance with the rules and orders which were in force on the
date of advertisement. Determination of this question largely B
depends on the facts of each case having regard to the terms and
conditions set out in the advertisement and the relevant rules and
orders. Lest there be any confusion, we would like to make it clear
that a candidate on making application for a post pursuant to an
advertisement does not acquire any vested right of selection, but C
if he is eligible and is otherwise qualified in accordance with the
relevant rules and the terms contained in the advertisement, he does
acquire a vested right of being considered for selection in
accordance with the rules as they existed on the date of
advertisement. *He cannot be deprived of that limited right on D
the amendment of rules during the pendency of selection unless
the amended rules are retrospective in nature.*”

(Emphasis supplied)

16. In this case, the qualification of a candidate is not in question. E
Nobody has been deprived of his right of being considered. Only a
preferential right had been given to the women. In that view of the matter,
the High Court, in our opinion, was not correct in taking the said view.

17. The other contention of Mr. Rao that the candidates had given F
only seven days' time for making preparation to appear in the second
screening test, cannot, in our considered view, give rise to a ground for
setting aside the entire selection process. The Tribunal did not make any
discrimination. One screening test had already been held. The number of
candidates appeared in the first screening test was 510. The Commission
obtained the permission of the Tribunal for holding the second screening G
test. It issued a notification on 12.12.2000 stating that such a test would
be conducted on 7.1.2001. All the candidates were given the same time
for preparation. Only because the appellants herein were employees at
the relevant time, the same by itself could not confer on them any special
privilege to ask for an extended time. They had no legal right in relation H

A thereto. Appellants had appeared at the examination without any demur. They did not question the validity of the said question of fixing of the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process.

B 18. For the reasons aforementioned, the appeals of the Andhra Pradesh Public Service Commission are allowed and that of Marripati Nagaraja is dismissed with costs. Counsel's fee quantified at Rs.25,000/- (Rupees twenty five thousand only).

C 19. The Andhra Pradesh Public Service Commission is hereby directed to finalise the selection process in the light of the judgment of this Court as expeditiously as possible and not later than three months from the date of receipt of a copy of this judgment.

K.K.T.

Appeals disposed of.