

SASIDHAR REDDY SURA

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v.

THE STATE OF ANDHRA PRADESH & ORS.
(Civil Appeal No. 10836 of 2013)

DECEMBER 05, 2013

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[ANIL R. DAVE AND DIPAK MISRA, JJ.]

Judicial Service – A.P. State Judicial Services – Appointment – To the post of District and Sessions Judge (Entry Level) – Eligibility – Absence of minimum age qualification – Effect – Appellant, though included in select list, not appointed as he had not completed 35 years of age at the time when the advertisement inviting applications for the post in question had been published – Justification – Held: Not justified – In the instant case, the relevant Rules provide only for the maximum age limit but do not say anything with regard to the minimum age of a candidate to be selected to the post in question – Though Justice Shetty Commission had expressed its view in its report that only after completion of 35 years of age, a person should be appointed as a District and Sessions Judge but the said recommendation has not been incorporated in the Rules framed by the High Court for giving appointment to the post in question – In the circumstances, the appellant, who had not completed 35 years of age at the relevant time could not have been denied appointment to the post in question simply because of his being under age as per the recommendations of the Justice Shetty Commission especially when there is no provision in the Rules that a candidate must have completed 35 years of age for being appointed to the post of a District and Sessions Judge – High Court erred in giving undue weightage to recommendations made by the Justice Shetty Commission, especially when the Rules did not provide for any minimum age for appointment to the post in question – Moreover, even

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A *Article 233 of the Constitution is also silent about the minimum age for being appointed as a District judge – Andhra Pradesh State Judicial Service Rules, 2007 – Clause V – Constitution of India, 1950 – Article 233.*

B In pursuance of advertisement published by the High Court of Andhra Pradesh inviting applications for appointment to posts of District and Sessions Judges (Entry Level) in the A.P. State Judicial Service, the appellant applied for the said post. He took the written examination and also appeared in the oral interview.
C Though the appellant found his name in the select list, he was not appointed to the post in question for the reason that he had not completed 35 years of age at the time when he had submitted his application or at the time when the advertisement had been issued and also for the
D reason that he had not completed seven years standing at the bar as an advocate.

As the appellant was not appointed to the post in question, he filed Writ Petition before the High Court. The
E High Court held that though the appellant had completed seven years as an advocate, he had not attained the age of 35 years at the time when the advertisement had been issued and therefore, the appellant was not eligible to be appointed to the post in question and hence, the present
F appeal.

Disposing of the appeals, the Court

HELD: 1. The relevant provisions pertaining to eligibility for being appointed to the post of District Judges
G have been incorporated in clause V of the Andhra Pradesh State Judicial Service Rules, 2007. Upon perusal of the above clause, it is very clear that for being appointed to the post in question, an advocate should have at least seven years of standing at the bar and he should not have
H completed 45 years of age in the month in which the

Notification inviting applications for such an appointment is published in the Andhra Pradesh Gazette. The said clause does not provide for any minimum age and therefore, it is very clear that the Rules provide only for the maximum age limit but not for any minimum age. Thus, the concept of 'minimum age' for being appointed to the post in question is not incorporated in the Rules. The said concept, with regard to the minimum age, has been brought only from the report of the Justice Shetty Commission. For the reasons recorded in the report of the Commission, the Commission was of the view that the post of a District and Sessions Judge, being an important post, which not only requires integrity and intelligence but also requires maturity, the Commission was of the view that a person not having completed 35 years of age should not be appointed to the said post. It is pertinent to note that this was merely a recommendation or suggestion made by the Commission. The recommendation or suggestion, if not supported by the Rules, cannot be implemented. In the instant case, the Rules are silent with regard to the minimum age. It only speaks about the maximum age. In the circumstances, one cannot read provisions incorporated in the report of the Commission into the Rules. The Rules are statutory and framed under the provisions of Article 309 of the Constitution of India. If the recommendations made by the Commission and the statutory Rules are at variance, the provisions incorporated in the Recruitment Rules have to be followed. [Paras 17, 18 and 19] [994-G; 995-D-H; 996-A-C]

1.2. In the instant case, the Rules do not say anything with regard to the minimum age of a candidate to be selected to the post in question whereas the Commission had expressed its view in its report that only after completion of 35 years of age a person should be appointed as a District and Sessions Judge but the said recommendation has not been incorporated in the Rules

A framed by the High Court for giving appointment to the post in question. [Para 20] [996-E-F]

B 1.3. In the aforesaid circumstances, the appellant, who had not completed 35 years of age at the relevant time could not have been denied the appointment to the post in question simply because of his being under age as per the recommendations of the Commission especially when there is no provision in the Rules that a candidate must have completed 35 years of age for being appointed to the post of a District and Sessions Judge. C [Para 21] [996-F-G]

D 1.4. The High Court was in error while giving undue weightage to the recommendations made by the Commission, especially when the Rules do not provide for any minimum age for the appointment to the post in question. Moreover, even Article 233 of the Constitution of India is also silent about the minimum age for being appointed as a district judge. [Para 22] [996-H; 997-A-B]

E *Syed T.A. Naqshbandi & Ors. v. State of Jammu & Kashmir and Ors.* (2003) 9 SCC 592: 2003 (1) Suppl. SCR 114 – relied on.

F *Rakhi Ray & Ors. v. High Court of Delhi & Ors.* (2010) 2 SCC 637: 2010 (2) SCR 239 – referred to.

G 2. It is directed that the appellant shall be appointed to the post in question with effect from the date on which he ought to have been appointed, however, he shall not be paid salary for the period during which he has not worked as a District and Sessions Judge. The appellant shall also be placed at appropriate place in the seniority list of the District Judges after considering his position in the merit list. [Para 23] [997-C-D]

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Case Law Reference:

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2003 (1) Suppl. SCR 114 relied on Para 6

2010 (2) SCR 239 referred to Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10836 of 2013.

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From the Judgment & Order dated 17.07.2012 of the High Court of A.P. at Hyderabad in WP No. 34683 of 2011.

WITH

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Civil Appeal No. 10837 of 2013.

Mohan Parasaran, ASG, R. Basant, L. Nageswara Rao, B. Adinarayana Rao, Basava Prabhu S. Patil, P.P. Rao, Y. Raja Gopala Rao, K. Parameshwar, Sudha Gupta, G. Ramakrishna Prasad, Suyodhan Byrapaneni, Mohd, Wasay Khan, Filza Moonis, Lawyer's Knit & Co., K. Swami, Nikhil Swami, Prabha Swami, Mahalakshmi Pavani, Akshat Kulshreshta, S. Manish, Meghna, Anshuman Ashok, P.S. Tripathi, Sridhar Potaraju, G. Gangmei, Nisha Pandey, Mahalakshmi Balaji & Co., P. Vinay Kumar, Gunnam Venkateswara Rao, G.N. Reddy, Debojit Borkakati, Bala Shivudu M., G. Ramakrishna Prasad, Tatini Basu, B. Subrahmanya Prasad, Anirudh Sanganeria, Venkatakrishna Kunduru, Debjoyti Basu, Dr. K. Lakshmi Narasimha, S. Udaya Kumar Sagar, Bina Madhavan, Praseena E. Joseph, Shivendra Singh, Sinha Shrey Nikhilesh, Santosh Mishra, K. Parameshwar, Vinay Kumar, C.S.N. Mohan Rao, Y. Raja Gopala Rao for the appearing parties.

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The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Leave granted.

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2. The appellant, a candidate who aspired to be a District and Sessions Judge, has filed this Appeal challenging the validity of the Judgment and Order dated 17th July, 2012

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A delivered by the High Court of Andhra Pradesh in Writ Petition No. 34683 of 2011.

B 3. The grievance which had been ventilated by the appellant before the High Court was that he had not been appointed to the post of District and Sessions Judge. In pursuance of an advertisement, dated 19th August, 2010 published by the High Court of Andhra Pradesh inviting applications for appointment to 18 (eighteen) posts of District and Sessions Judges (Entry Level) in the A.P. State Judicial Service, the appellant had applied for the said post. He had taken the written examination and also appeared in the oral interview and he had found his name in the select list. Though the appellant found his name in the select list, he was not appointed to the post in question for the reason that he had not completed 35 years of age at the time when he had submitted his application or at the time when the advertisement had been issued and also for the reason that he had not completed seven years standing at the bar as an advocate.

E 4. As the appellant had not been appointed to the post in question, he had filed the aforesaid Writ Petition before the High Court of Andhra Pradesh. While deciding the Writ Petition, the High Court had come to a conclusion that though the appellant had completed seven years as an advocate, he had not attained the age of 35 years at the time when the advertisement had been issued i.e. on 19th August, 2010 and therefore, the appellant was not eligible to be appointed to the post in question. Thus, on one count the petition filed by the appellant had failed and therefore, by filing this appeal the appellant has approached this Court contending that it was not necessary for him to have completed 35 years of age for being appointed to the post of the District and Sessions Judge (Entry Level) in the A.P. Judicial Service.

H 5. The learned counsel appearing for the appellant had submitted that it was not necessary for the appellant to have

completed the age of 35 years for being appointed to the post in question as there is no provision in the Andhra Pradesh State Judicial Service Rules, 2007 (hereinafter referred to as the 'Rules') to the effect that the candidate, to be appointed to the post in question, must have completed 35 years of age. He had submitted that the High Court committed an error by coming to the conclusion that simply because the Justice Shetty Commission (hereinafter referred to as 'the Commission') had recommended that a person who has completed 35 years of age should only be appointed as a District and Sessions Judge, the High Court, on an erroneous ground decided not to appoint the appellant to the post in question. According to him the Commission had merely made certain suggestions with regard to appointment of deserving candidates in judiciary so as to see that the judiciary becomes stronger. In an effort to enhance the standard of judges and judiciary, the Commission headed by Justice Shetty had been appointed and certain recommendations had been made by the said Commission. The said recommendations, according to the learned counsel appearing for the appellant, were merely recommendatory in nature and by no stretch of imagination, the said suggestions could have been accepted unless they were supported by relevant recruitment rules. Ultimately he had also submitted that if the recruitment rules are at variance with the recommendations of the Commission, the recruitment rules are to be followed and not the recommendations made by the Commission.

6. The learned counsel had relied upon certain judgments so as to buttress his submissions. He had relied upon the judgment delivered in the case of *Syed T.A. Naqshbandi & Ors. v. State of Jammu & Kashmir and Ors.* (2003) 9 SCC 592. He had drawn our attention to para 8 of the said judgment which reads as under:

"...The conditions of service of members of any service for that matter is governed by statutory rules and orders, lawfully made in the absence of rules to cover the area

A which has not been specifically covered by such rules, and
 so long they are not replaced or amended in the manner
 known to law, it would be futile for anyone to claim for those
 existing rules/orders being ignored yielding place to certain
 policy decisions taken even to alter, amend or modify
 B them. Alive to this indisputable position of law only, this
 Court observed at Para 38, that " we are aware that it will
 become necessary for service and other rules to be
 amended so as to implement this judgment".
 Consequently, the High Court could not be found fault with
 C for considering the matters in question in the light of the
 Jammu and Kashmir Higher Judicial Service Rules, 1983
 and the Jammu and Kashmir District and Sessions Judges
 (Selection Grade Post) Rules, 1968 as well as the criteria
 formulated by the High Court...."

D 7. The aforestated observations made by this Court clearly
 state that till the existing recruitment rules are amended,
 suggestions made by the Commission should not be taken into
 account. The learned counsel had submitted that the Rules
 governing provisions with regard to recruitment of a District and
 E Sessions Judge did not incorporate any restriction with regard
 to minimum age for being appointed as a District and Sessions
 Judge and therefore, the recommendation made by the
 Commission with regard to minimum age could not have been
 a reason for not giving appointment to the appellant. He had
 F drawn our attention to the contents of the advertisement which
 pertain to qualifications and age of the candidate for
 appointment to the post of a District and Sessions Judge. The
 relevant portion of the advertisement reads as under:

G " **Qualifications and age** : The applicant for the above
 said post should be (a) an advocate of not less than seven
 years standing at the Bar (b) must not have completed 45
 years of age on the first day of August, 2010 (relaxation
 by three years in the upper age limit in respect of persons
 belonging to the Scheduled Castes, the Scheduled Tribes
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and Backward Classes) and (c) of sound health and active habits and free from any body defect or infirmity which render him/her unfit for such appointment.”

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8. The aforesaid portion of the Advertisement merely states that a candidate must not have completed 45 years of age on the 1st day of August, 2010 and the appellant had not completed 45 years of age as on 1st August, 2010. The Advertisement as well as the Rules do not say anything with regard to minimum age of a candidate and therefore, the concept of minimum age being brought in by the High Court was erroneous and thus, the view expressed by the High Court cannot be accepted.

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9. He had further submitted that the aforesaid judgment delivered in the case of *Syed T.A. Naqshbandi's case (supra)* had been followed by this court in the case of *Rakhi Ray & Ors. v. High Court of Delhi & Ors.* [(2010) 2 SCC 637].

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10. The learned counsel had also drawn our attention to the provisions of Article 233 of the Constitution of India, which deals with appointment to the post of a District and Sessions Judge. The said Article reads as under:

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“Article 233: Appointment of district judges

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State

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(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.”

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11. The learned counsel had submitted that there is no provision with regard to minimum age in the aforesaid Article

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A and therefore, the High Court was in error in rejecting the petition filed by the appellant on the ground that the appellant had not attained the age of 35 years at the time of publication of the advertisement.

B 12. For the aforesaid reasons, the learned counsel had submitted that the view expressed by the High Court is erroneous and therefore, this Appeal should be allowed and directions should be given that the appellant be appointed as a District and Sessions Judge forthwith with retrospective effect and should also be paid salary from the date on which he ought to have been appointed.

C 13. On the other hand, the learned counsel appearing for the High Court had fairly submitted that though there was a recommendation by the Commission with regard to fixing of minimum age for being appointed as a District and Sessions Judge, the Rules governing appointment to the post in question did not make any provision with regard to minimum age.

D 14. The learned counsel appearing for the other selected candidates also made similar submissions.

E 15. We have heard the learned counsel at length and have also perused the judgments referred to by the learned counsel and the impugned judgment.

F 16. Upon hearing the learned counsel and looking at the relevant provisions governing appointment to the post of a District and Sessions Judge (Entry Level) in the A.P. Judicial Service, we are not persuaded to agree with the view expressed by the High Court.

G 17. The relevant provisions pertaining to eligibility for being appointed to the post of District Judges have been incorporated in clause V of the Rules, which read as follows:

H "1. **District Judges** : A person to be appointed to the category of District Judges by direct recruitment shall be :

- a. An advocate of not less than seven years standing at the Bar A
- b. A person, who has not completed forty five years or age on the month in which the notification inviting applications for such appointment is published in the Andhra Pradesh Gazette. B
- c. A person of sound health and active habits and free from any bodily defect or infirmity, which tender him, unfit for such appointment. C

Provided that the upper age limit in respect or persons belonging to the Scheduled Castes; the Scheduled Tribes and Backward Classes is relaxable by three years.”

18. Upon perusal of the above clause, it is very clear that for being appointed to the post in question, an advocate should have at least seven years of standing at the bar and he should not have completed 45 years of age in the month in which the Notification inviting applications for such an appointment is published in the Andhra Pradesh Gazette. The said clause does not provide for any minimum age and therefore, it is very clear that the Rules provide only for the maximum age limit but not for any minimum age. Thus, the concept of ‘minimum age’ for being appointed to the post in question is not incorporated in the Rules. D
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19. The said concept, with regard to the minimum age, has been brought only from the report of the Commission. For the reasons recorded in the report of the Commission, the Commission was of the view that the post of a District and Sessions Judge, being an important post, which not only requires integrity and intelligence but also requires maturity, the Commission was of the view that a person not having completed 35 years of age should not be appointed to the said post. It is pertinent to note that this was merely a G
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A recommendation or suggestion made by the Commission. The recommendation or suggestion, if not supported by the Rules, cannot be implemented. In the instant case, the Rules are silent with regard to the minimum age. It only speaks about the maximum age. In the circumstances, one cannot read provisions incorporated in the report of the Commission into the Rules. The Rules are statutory and framed under the provisions of Article 309 of the Constitution of India. In our opinion, if the recommendations made by the Commission and the statutory Rules are at variance, the provisions incorporated in the Recruitment Rules have to be followed. It is pertinent to note that when such a question had been raised before this Court, in the case of *Syed T.A. Naqshbandi's case* (supra), this Court had also observed that till relevant recruitment rules are suitably amended so as to incorporate the recommendations made by the Commission, provisions of the statutory rules must be followed.

20. In the instant case, the Rules do not say anything with regard to the minimum age of a candidate to be selected to the post in question whereas the Commission had expressed its view in its report that only after completion of 35 years of age a person should be appointed as a District and Sessions Judge but the said recommendation has not been incorporated in the Rules framed by the High Court for giving appointment to the post in question.

21. In the aforesaid circumstances, the appellant, who had not completed 35 years of age at the relevant time could not have been denied the appointment to the post in question simply because of his being under age as per the recommendations of the Commission especially when there is no provision in the Rules that a candidate must have completed 35 years of age for being appointed to the post of a District and Sessions Judge.

22. In our opinion, the High Court was in error while giving undue weightage to the recommendations made by the

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PRADESH [ANIL R. DAVE, J.]

Commission, especially when the Rules do not provide for any minimum age for the appointment to the post in question. Moreover, even Article 233 of the Constitution of India is also silent about the minimum age for being appointed as a district judge.

23. For the aforesaid reasons, we are in agreement with the submissions made by the learned counsel appearing for the appellant and therefore, we quash the impugned judgment so far as it pertains to the present appellant and we direct that the appellant shall be appointed to the post in question with effect from the date on which he ought to have been appointed, however, he shall not be paid salary for the period during which he has not worked as a District and Sessions Judge. The appellant shall also be placed at appropriate place in the seniority list of the District Judges after considering his position in the merit list. We are sure that the respondent- High Court as well as the State shall do the needful for giving an appointment to the appellant at an early date.

24. The appeal stands disposed of as allowed with no order as to costs.

C.A.No. 10837/2013

(Arising out of SLP(C) No.24313/2012)

1. Leave granted.

2. As the appellant had been desirous of being appointed as a District and Sessions Judge (Entry Level) in the A.P. State Judicial Services, she had applied for the post in question. She had been selected for the post in question and her name was included in the select list at no.16.

3. The selection of the appellant had been challenged by some candidates by filing W.P.No.894 of 2012 in the High Court of Andhra Pradesh on the ground that the appellant had not secured minimum required marks in the interview and she

A had not attained 35 years of age at the time of publication of the advertisement and therefore, she could not have been selected. The aforesaid petition was allowed but it was allowed only on the ground of age limit of the appellant. The High Court was of the view that as the requirement of minimum marks had been done away with by virtue of an amendment made to Rule 6(4) & (10) of the A.P. State Judicial Service Rules, 2007 vide G.O. Ms. No.132, dated 16.11.2011, it was not necessary for the appellant to secure minimum marks in the interview for being eligible for appointment.

C 4. Thus, the appellant was not appointed only for the reason that she had not completed 35 years of age at the time when the advertisement inviting applications for the post in question had been published.

D 5. By virtue of an order passed in C.A.No.10836 of 2013 arising out of SLP(C) No.23171 of 2012, this Court has already held that there is no minimum age qualification for being appointed to the post in question and therefore, in our opinion, the appellant could not have been denied appointment to the post in question on the ground that she had not completed 35 years of age at the time when the advertisement had been published.

F 6. For the reasons recorded in C.A.No.10836 of 2013 arising out of SLP(C) No.23171 of 2012, the present appeal is allowed and it is directed that the High Court as well as the respondent-State will do the needful for giving appointment to the appellant with retrospective effect i.e. from the date on which she ought to have been appointed, however, she shall not be paid salary for the period during which she has not worked as a District & Sessions Judge. We are sure that the respondents would do the needful for the appointment of the appellant at an early date.

7. The appeal is allowed with no order as to costs.