

KARNATI RAVI & ANR.

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v.

COMMISSIONER SURVEY SETTLEMENTS AND LAND
RECORDS & ORS.

(Civil Appeal No. 897 of 2010)

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JULY 20, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Service law – Selection – Executive instructions – Whether in the matter of selection and appointment, executive instructions pertaining to the procedure of selection, which is not prescribed under the Rules can rule the field – Held: The method of selection, in the absence of Rules has to be supplied by the executive instructions – In the absence of the Rules, it is well within the powers of the Executive u/Art.162 of the Constitution to provide for the required instructions with regard to the procedure for selection, so long as they do not come in conflict with the Rules – That apart, in the instant case, all the candidates participated in the selection, both in the written examination, though not a prescribed one, for which there was no objection, as also the physical endurance test – Having participated in the selection without any objection, they cannot later challenge the procedure – Constitution of India – Art.162.

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Dismissing the appeals, the Court

HELD : In the instant case, even a written examination was not a procedure prescribed under the Rules. The Rules only provided the essential qualifications for the post. All the appellants appeared in the written examination. They were also subjected to a physical endurance test which they could not qualify. It was, thereafter, the unsuccessful candidates in the physical endurance test put up a challenge regarding the validity of the executive instructions whereby physical endurance test was prescribed. In the absence of the Rules, it is well within the powers of the Executive under Article 162 of the Constitution to provide for the required instructions with regard to the procedure for selection, so long as they do not come in conflict with the

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A Rules. That apart, all the candidates participated in the selection, both in the written examination, though not a prescribed one, for which there was no objection, as also the physical endurance test. Having participated in the selection without any objection, they cannot later challenge the procedure. [Paras 5-7] [508-G-H; 509-A-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 897 of 2010.

From the Judgment and Order dated 25.06.2007 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Petition No. 15265 of 2006

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WITH

C. A. No. 898 of 2010.

C. S. N. Mohan Rao, D. Mahesh Babu, Advs. for the Appellants.

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S. Udaya Kumar Sagar, Mrityunjai Singh, M/s. Venkat Palwai Law Associates, Advs. for the Respondents.

The Judgment of the Court was delivered by

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KURIAN, J. 1. The issue raised in these Appeals pertains to the question whether in the matter of selection and appointment, executive instructions pertaining to the procedure of selection, which is not prescribed under the Rules can rule the field.

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2. The appellants participated in the selection for appointment as Deputy Surveyor. There is no dispute that all of them possessed the qualification for the post. The procedure for selection was, however, not available under the Rules and, therefore, by executive instructions, it was notified that the participants would be subjected to a written test and also a physical endurance test.

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3. It is the contention of the appellants that the physical endurance test is not a test prescribed under the Rules, unlike in the case of selection of a Police Constable where it is a prescribed procedure.

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4. We are afraid this contention cannot be appreciated.

5. It may be seen that even a written examination is not a procedure prescribed under the Rules. The Rules only provide the essential qualifications for the post. The method of selection, in the absence of Rules has to be supplied by the executive instructions. All

the appellants have appeared in the written examination. They were also subjected to a physical endurance test which they could not qualify. It is, thereafter, the unsuccessful candidates in the physical endurance test put up a challenge regarding the validity of the executive instructions whereby physical endurance test has been prescribed. A

6. As we have already noted above, in the absence of the Rules, it is well within the powers of the Executive under Article 162 of the Constitution to provide for the required instructions with regard to the procedure for selection, so long as they do not come in conflict with the Rules. B

7. That apart, all the candidates have participated in the selection, both in the written examination, though not a prescribed one, for which there is no objection, as also the physical endurance test. Having participated in the selection without any objection, they cannot later challenge the procedure. C

8. In view of the above, we do not find any merit in these Appeals and the same are dismissed. D