

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.01.2017

Delivered on: 13.02.2017

Coram

The Honourable **Mr.Justice K.K.SASIDHARAN**

and

The Honourable **Mr.Justice V.PARTHIBAN**

W.P.No.33057 of 2016
and W.M.P.No.28851 of 2016

1. The Chairman and Managing Director,
BSNL Corporate Office,
Harish Chandra Mathur Lane,
Janpath, New Delhi-110 001.

2. The General Manager (Pers)
BSNL Corporate Office,
Harish Chandra Mathur Lane,
Janpath, New Delhi-110 001.

3. The General Manager (Estt)
BSNL Corporate Office,
Harish Chandra Mathur Lane,
Janpath, New Delhi-110 001.

4. The Chief General Manager,
BSNL Corporate Office,
78, Purnawalkam High Road,
Chennai-600 010.

.. Petitioners

versus

1. Shoba

2. The Registrar,
CAT, Madras Bench,
Chennai.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records of the 2nd respondent dated 02.08.2016 made in MA No.310 in OA 4238 of 2016 and quash the same.

For Petitioners: Mr.S.Gopinath

For Respondents: Mr.R.Rajesh Kumar for R1

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the second respondent, Central Administrative Tribunal (in short, 'the Tribunal') in M.A.2016 in O.A.No.438 of 2016 dated 2.8.2016 allowing the Original Application filed by the first respondent employee.

2. Questioning the said order, the respondents before the Tribunal, the petitioners herein, have come forward with the present Writ Petition.

3. The first respondent employee was working as Senior Telecom Office Assistant with effect from 13.4.2007. On

15.6.2016, on behalf of the petitioners, a notification was issued inviting in-service candidates for participation in the Limited Internal Competitive Examination (LICE) for the purpose of promotion to the post of Junior Telecom Officer (JTO). According to the notification, the selection was to be conducted on the basis of newly amended Rules which came into effect from 14.10.2015. However, the vacancies notified under the said Notification arose during 2015 or prior to the amendment of the Rules. According to the respondent employee, she was fully eligible and qualified under the pre-amended Rules during the period when the vacancies admittedly had arisen and as per the amended Rules, the qualification prescribed for the appointment of JTO had changed and thereby she became ineligible. According to her, if the Administration had not delayed the selection process and conducted LICE at the appropriate time, she would have participated and staked her claim for promotion. In the above circumstances, the first respondent employee approached the learned Tribunal, seeking for the following relief:

"To quash the eligibility clause specified for
50% promotion through Limited Internal

Competitive Examination (LICE)/Absorption in Column 11(2) of Junior Telecom Officer (Telecom) Recruitment Rule dated 14.10.2015 and quash the eligibility condition stipulated in Limited Internal Competitive Examination (LICE) bearing Ref.No.ART/101-3/JTO(T)/LICE/2013-14/6 dated 04/03/2016 and consequently direct the respondent to declare the applicant as eligible for Limited Internal Competitive Examination (LICE) bearing Ref.No. ART/101-3/JTO(T)/LICE/2013-14/6 dated 04/03/2016 and thus render justice."

4. The claim of the first respondent employee was resisted by the petitioners herein, that amendment to the Rules in question were necessitated keeping in view of the suggestions of the Unions/Associations and various Court directions and the amended Rules shall come into force from the date of its publication and shall be applicable to all LICEs and therefore, the claim of the first respondent employee could not be sustained in law in view of the subsequent amendment and notification issued for the subject selection. It was also contended on behalf of the petitioners herein before the Tribunal that as per the amended Rules which came into force with effect

from 14.10.2015, all LICEs to be notified in future shall abide by the new Rules. Therefore, it was contended that the first respondent employee was not entitled to the relief as prayed for by her.

5. After taking note of the submissions put forth by the learned counsel appearing for either parties, the learned Tribunal disposed of the Original Application, with a direction that the erstwhile Rules alone should be made applicable as far as the applicant/first respondent employee was concerned and she ought to be permitted to appear for LICE held on 28.8.2016 and her eligibility has to be processed by the authority on the basis of the erstwhile Rules. However, the learned Tribunal, in view of the direction given above, did not go into the validity of the new Rules which were challenged by the first respondent employee.

6. The learned Tribunal, while coming to the above said conclusion, has placed reliance upon a decision of the Hon'ble Supreme Court reported in AIR 1983 (SC) 852 **(Y.V.Rangaiah**

and others versus J.Sreenivasa Rao and others). In the said decision, the Hon'ble Supreme Court has held that the posts which were fell vacant prior to the amended Rules, would be governed by the old rules only and not by the amended rules. The said decision is the landmark decision on the said issue, which was followed in very many cases raising similar issue. The learned Tribunal, rightly relied upon the said decision, having regard to the facts and circumstances of the present case, wherein, admittedly, the vacancies arose prior to coming into force the new Rules. In such view of the matter, the learned Tribunal allowed the application without rightly going into the validity of the amended Rules. As against the order of the Tribunal, the petitioners came forward with the present Writ Petition.

7. Learned counsel appearing for the rival parties reiterated their submissions that were made before the learned Tribunal. Learned counsel appearing for the petitioners strongly relied upon the amended Rules, particularly sub clause (iii) of Rule 1 which was extracted herein below:

"(iii) These Rules shall come into force from

the date of its publication and shall be applicable to all Limited Internal Competitive Examinations /Direct Recruitment Examination to be notified in future after publication of these Recruitment Rules by the Company."

8. According to Shri Gopinath, learned counsel appearing for the petitioners, the newly amended provision was not challenged and hence, the relief granted to the employee, cannot be sustained in law. Moreover, inter alia, he contended that once new Rules came into force and any notification issued subsequent thereto, will have to abide by the new Recruitment Rules and hence, the application of erstwhile rules cannot be in order.

9 . In support of his contentions, the learned counsel cited three decisions, viz.,

i) 2011(6) SCC 725 (***Deepak Agarwal and another versus State of Uttar Pradesh and others***);

ii) 2009 (12) SCC 62 (***High Court of Delhi and another versus A.K.Mahajan and others***); and

iii) CDJ 2011 SC 408 (***CMD/Chairman, BSNL and others***

versus Mishri Lal and others)

10. The above decisions were rendered in the facts of those cases by the Hon'ble Supreme Court and the same cannot be applied to the factual matrix of the present case.

11. On behalf of the first respondent employee, Shri R.Rajesh Kumar, learned counsel contended that admittedly, the vacancies had arisen prior to coming into force the new Recruitment Rules and it was not the fault of his client that selection was delayed for years together and held after coming into force new Recruitment Rules by which time, the first respondent employee has been deprived of her valuable right to be promoted. Therefore, according to the learned counsel, application of new Recruitment Rules for the vacancies which arose during existence of erstwhile Rules, was unfair, unreasonable and violative of Article 14 of the Constitution of India.

12. On the other hand, the learned counsel for the first respondent employee relied upon a decision reported in AIR

1983 (SC) 852 (***Y.V.Rangaiah and others versus J.Sreenivasa Rao and others***), which was cited before the Tribunal and the learned Tribunal also relied upon the same for arriving at just conclusion. The objection of the learned counsel appearing for the petitioners that sub clause (iii) of Rule 1 of new Recruitment Rules was not put under challenge, cannot also be countenanced for the simple reason that the learned Tribunal, while giving direction, has not chosen to go into the validity of the new Recruitment Rules. Therefore, we also do not propose to deal with the validity or otherwise of the new Recruitment Rules.

13. For the foregoing reasons, we do not find any infirmity in the order passed by the learned Tribunal, in order to interfere with the same.

Accordingly, the Writ Petition fails and it is dismissed. No costs.

suk

(K.K.S.,J.) (V.P.N.,J.)
13-02-2017

Index: Yes/No
Internet: Yes/No

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K.K.SASIDHARAN, J.
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Pre Delivery order in
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