

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

%02.05.2018

W.P.NO.8008, 8170, 8671, 9870 AND 15912 OF 2018

W.P.NO.8008 OF 2018

P.PHANINDRA and 35 others.

PETITIONERS

AND

TELANGANA STATE PUBLIC SERVICE COMMISSION

RESPONDENT

Counsel for the petitioners : SRI VEDULA SRINIVAS

Counsel for the respondents -- SRI D.BALA KISHAN RAO

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➤ Head Note.

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?Cases Referred:

1. (2013)11 SCC 58
2. (1997)4 SCC 18
3. (2017)11 SCC 521
4. (2005)9 SCC 779
5. (1993)2 SCC 429
6. (2000)5 SCC 262
7. (1993)2 SCC 429
8. 1993 Supp (3) SCC 168

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDYW.P.NOS.8008, 8170, 8671, 9870 AND 15912 OF 2018COMMON ORDER

Since the issue involved in all these writ petitions is common, they are heard analogously and are being disposed of by this common order.

2. Telangana State Public Service Commission (for short 'the Commission'), is the recruiting agency for the State Government and is governed by the Telangana State and Subordinate Service Rules, 1996 (for short 'the Rules') and Rule 12(3)(a) of said rules, deals with the qualification for direct recruitment. The Commission, represented by its Secretary, issued notification No.31/2017 dated 02.06.2017 inviting applications online from qualified candidates to the post of Assistant Executive Engineers in various Engineering Services in the State of Telangana. The last date for submission of application was 11.07.2017 and the selection was by way of objective type examination, followed by verification of certificates and oral interview. Para – I Clause (4) of the notification specifically prescribed that applicants must possess the requisite qualification as on the date of notification.

3. In the above back ground, coming to the facts in W.P.Nos.8008, 8170, 8671 and 9870 of 2018, the petitioners in these writ petitions, as per the averments made in the affidavits filed in support of the writ petitions, were pursuing B.Tech. (Civil) final year in different colleges. In May, 2017,

they have written final year examinations, and the results were declared in the month of June, 2017.

4. Here it is to be noticed that their results were admittedly declared after issuance of notification.

5. In pursuance of the above notification dated 02.06.2017, petitioners applied for the said posts and qualified in the written examination and their certificates were verified and they were awaiting call for oral interview. In the list of candidates notified by the Commission for oral interview, their names did not figure. Aggrieved by the same, these writ petitions have been filed.

6. This court passed interim orders in W.P.Nos.8008, 8170 and 8671 of 2018 to the effect that the petitioners in these writ petitions shall be permitted for the interview, however, final results shall not be declared.

7. Seeking to vacate the above interim orders, the Commission filed vacate petitions in W.P.Nos.8008 and 8170 of 2018.

8. Three among many aspiring candidates, who secured their Bachelors Degree in Engineering (Civil) much prior to the present notification No.31/2017 dated 02.06.2017 and qualified in the written examination and attended the oral interview, and waiting for results, filed W.P.No.15912 of 2018, aggrieved by the action of the Commission, in allowing the petitioners in the above writ petitions, who do not possess the

requisite qualifications as on the date of notification, to write the written examination; and in not strictly adhering to Paragraph – 1(4) of the notification, which prescribes the eligibility criteria.

9. Learned counsel appearing for the petitioners in W.P.Nos.8008, 8170, 8671 and 9870 of 2018, would submit that all the petitioners in these writ petitions, acquired the requisite qualification i.e., Bachelor in Engineering (Civil), prior to the last date for submission of applications. They stated that the notification was dated 02.06.2017 and petitioners acquired the requisite qualification in the month of June, 2017 and the last date for submission of applications was 11.07.2017. As the petitioners acquired the required qualification before the last date of submission of applications, they should be considered as eligible to apply for the posts under the notification. In support of their contention, learned counsel, relied on the judgment of the Apex Court in *RAKESH KUMAR SHARMA v. STATE (NCT OF DELHI)*¹, wherein the Apex Court at paragraph No.11 of the judgment held that “ *There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.*” Learned counsel stated that as these petitioners were eligible as on the last date of submission of

¹ (2013)11 SCC 58

applications, they have right to be considered, and accordingly, the Commission allowed them to write the written examination and they qualified in the same, and their certificates were also verified, but erroneously, they were denied the opportunity to face oral interview, which is illegal and arbitrary. Alternatively, learned counsel contended that since the petitioners were allowed for written examination and qualified in the merit and their certificates were verified, the respondents may consider their candidatures, as best talent would be available. He stated that in similar circumstances in the judgment of the Apex Court in *ASHOK KUMAR SHARMA v. CHANDER SHEKAR*² where the candidates who acquired requisite qualification by the time of interview were allowed for interview; and that when the same was challenged, the Apex Court refused to interfere with the same and held that allowing the said candidates to appear for the interview, the recruiting authority was able to get the best talent and that such course was in furtherance of public interest. With these submissions, the learned counsel sought to allow the writ petitions by permitting the petitioners to attend the oral interview.

10. On the other hand, the learned Standing Counsel Sri D.Kishan Rao, appearing for the Commission and the learned counsel for the petitioners in W.P.No.15912 of 2018, contended that under paragraph 1 clause 4 of the notification, it is specifically mentioned that the candidates shall possess the requisite qualification as on the date of notification. In

² (1997) 4 SCC 18

the present case, the petitioners in the above said writ petitions, admittedly do not possess the requisite qualification as on the date of notification, as by that time, they have only written their final year examination in May, 2017 and their results were declared after 2nd June, 2017 i.e., date of notification. It is settled principle of law that result of examination does not relate back to date of examination and the candidates will acquire the qualification only on the date of declaration of results. Learned counsel stated that the eligibility of the candidates shall have to be reckoned as on the date specified in the notification and if the date is not so specified, candidates who acquire eligibility as on the last date fixed for making applications, can be considered for employment. In the instant case, in the notification, it is specifically mentioned that the applicants shall possess the requisite qualification as on the date of notification. Therefore, the candidates who possess the required qualification as on that date, are alone, eligible to apply for the posts pursuant to the notification. Learned Standing Counsel for the Commission submits that as the petitioners in the above said writ petitions do not possess the requisite qualifications as on the date of notification, as the same could be noticed subsequently, their cases were not considered for oral interview. Learned counsel in support of their contentions, relied on the judgments of the Apex Court in *RAKESH KUMAR SHARMA*'s case (1 *supra*), *STATE OF U.P. v. VIJAY KUMAR MISRA*³ and *DOLLY CHANDA v.*

³ (2017) 11 SCC 521

CHAIRMAN, JEE⁴, DR. M.V. NAIR v. UNION OF INDIA⁵. With these submissions, the learned counsel sought to vacate the interim orders granted by this court and to dismiss W.P.Nos.8008, 8170, 8671 and 9870 of 2018.

11. In view of above rival contentions, the point that falls for my consideration is whether the applicants in the above writ petitions, who acquired requisite qualification as on the last date of submission of application, can be considered eligible, vis-à-vis paragraph 1 clause (4) of the said notification dated 02.06.2017, which prescribes the date for possession of such requisite qualification?

12. The qualification to the post of Assistant Executive Engineers (Civil), through direct recruitment, was prescribed in terms of Rule 12 (3)(a) of the Rules. The said provision, for better appreciation, is extracted as under:

12. Qualification for direct recruitment:

(3) (a) A candidate should possess the academic qualifications and experience including practical experience prescribed, if any, for the post, on the date of the notification for direct recruitment issued by the concerned recruiting agency.

A reading of the above provision makes it clear that the candidates shall possess the requisite qualification as on the date of notification issued by the recruiting agency. In the notification dated 02.06.2017, para-I Clause (4), which prescribes the educational qualifications, reads as under:

⁴ (2005)9SCC 779

⁵ (1993)2 SCC 429

“Applicants must possess the qualifications from a recognized University / Institution as detailed below or equivalent thereto, as specified in the relevant Service Rules, indented by the Department as on the date of notification.”

13. In consonance with Rule 12(3)(a) of the Rules, the Commission, which is the recruiting agency, issued the present notification specifically prescribing that the applicants must possess the qualifications as specified in the relevant rules indented by the Department, as on the date of notification.

14. From a reading of the above provision, there is no scope for any ambiguity that the applicants shall possess the specified qualifications as on the date of notification. In the present case, the notification is dated 02.06.2017 and by the said date, if the applicants intend to apply, they shall possess the specified qualifications. As on the date of present notification, admittedly, petitioners do not possess the academic qualifications for the said posts and they claim that they acquired the same before the last date of submission of applications.

15. In *BHUPINDERPAL SING v. STATE OF PUNJAB*⁶, the Apex Court held as under:

“13. . . . The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for application; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.”

⁶ (2000)5 SCC 262

16. A three-judge Bench of the Apex Court in *M.V.NAIR v. UNION*

*OF INDIA*⁷ held as under:

“9. . . It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date.”

17. In another judgment the Apex Court in *REKHA CHATURVEDI v.*

*UNIVERSITY OF RAJASTHAN*⁸ held thus:

“10. . . Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. . . Reference in this connection may also be made to two recent decisions of this court in *A.P. Public Service Commission v. B.Sarat Chandra* {(1990)2 SCC 669} and *Vizianagaram Social Welfare Residential School Society v. M.Tripura Sundari Devi* {(1990)3 SCC 655}.

18. As per law laid down in the above judgments it is clear that eligibility criteria shall be fulfilled by the candidate seeking public employment as on the date specified by the relevant service rules and advertisement/notification; and in case no such date is specified, then the eligibility criteria shall be applied with reference to the last date specified for submission of applications to the competent authority.

19. In the present case, the notification specifically prescribes that the applicants shall possess the requisite qualifications as on the date of notification. Therefore, the candidates who possess the requisite qualification as on the date of notification, alone are eligible and the petitioners, who acquired requisite qualification subsequent to date of

⁷ (1993)2 SCC 429

⁸ 1993 Supp(3) SCC 168

notification, cannot be said to be eligible, as such the contention of the counsel for the petitioners in this regard, is rejected.

20. In Rakesh Kumar Sharma's case (1 supra), relied on by the learned counsel for the petitioners, the question that fell for consideration was "*whether the appellant could claim any relief, if for one reason or the other his result had not been declared up to the last date of the submission of the application form*". The Apex Court held that eligibility conditions should be examined as on the last date for receipt of applications and that candidate fulfilling the requisite qualification, has a right to be considered for appointment. In the said case, as the applicant did not possess the requisite qualification on the last date of submission of application, though he acquired it subsequently, the Apex Court held that since the appellant did not possess the requisite eligibility on prescribed date; was ineligible. The facts in the present case are different. The notification specifically prescribes that applicants shall possess the required qualification as on the date of notification, but the applicants herein claim that they acquired the said qualifications prior to last date of submission of applications. As the relevant rules and notification are clear, the observations of the Apex Court that persons eligible on the last date of submission of applications has a right to be considered, is not applicable to the facts of the present case on all fours.

21. In *ASHOK KUMAR SHARMA v. CHANDER SHEKAR* (2 supra), relied on by the learned counsel for the petitioners in W.P.Nos. 8008, 8170, 8671 and 9870 of 2018, the facts disclose that the candidates who were not possessing requisite qualification as on the date of notification and acquired subsequently were considered for interview and when the same was challenged, the Apex Court dismissed the same, holding that by allowing the said candidates to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest. In the review petition, though such view of the earlier majority judgment of Apex Court, was found fault with, by holding that permitting the candidates who did not fulfil the requirement but acquired the requisite qualification later albeit before appearing for interview, was impermissible; but the Apex Court refused to interfere with the discretionary relief granted in its earlier decision {1993 Supp (2) SCC 611}. Therefore, the proposition of law laid down in this judgment is also similar to the view taken by Apex Court in the decisions cited 5, 6 and 8 supra.

22. The further complaint of the petitioners in W.P.Nos. 8008, 8170, 8671 and 9870 of 2018, is that some of the candidates who were pursuing B.Tech from JNTU, Hyderabad, and appeared for final year examination in May, 2017, were allowed for interviews though their results were notified after the date of the present notification on 08.06.2017, therefore, the petitioners, in these writ petitions, may also be permitted for interviews.

But the learned Standing Counsel for the Commission, on instructions, submits that the Commission has taken a decision to strictly adhere to paragraph -1 (4) of the notification dated 02.06.2017, therefore, no candidate who acquired qualification subsequent to the date of notification, can be considered for selections.

23. For the foregoing reasons, I do not find any merit in W.P.Nos. 8008, 8170, 8671 and 9870 of 2018 and they are accordingly dismissed and consequently, the interim orders stand vacated.

24. In view of the submission of the learned Standing Counsel for the Commission that the Commission is strictly adhering to Paragraph -I (4) of notification dated 02.06.2017 and in the light of the laid down by Apex Court in the decisions cited supra, no further directions need be issued in W.P.No.15912 of 2018 and the same is accordingly disposed of recording the same.

25. Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:02—05—2018
AVS

Note: L.R. copy to be marked.
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