HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.452 of 2019

03.07.2019

Between:

The State of Telangana and others

...Appellants

and

T. Rajesh and others

...Respondents

Counsel for the appellants : Mr. S. Sharath Kumar,
Special Government Pleader

Counsel for the respondents: Mr. K. Pavan Kumar
for
Mr. D. Sudharshan

The Court made the following:

JUDGMENT: **(Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)**

The appellants have challenged the legality of the order dated 27.02.2019, passed by a learned Single Judge in W.P.No.19144 of 2018, whereby the learned Single Judge has directed them to consider the cases of the respondent-petitioners, who are eligible on the basis of the notification dated 20.01.2018, for promotion to the post of Assistant Analytical Officer, and to pass appropriate orders within a period of eight weeks.

Briefly, the facts of the case are that the respondent-petitioners were working as Police Constables in different places. On 20.01.2018, the appellants issued a notification for filling up of the vacancies for the post of Assistant Analytical Officer (I.D. Assistants) in the Intelligence Department. According to the said notification, no person shall be eligible, who has completed 32 years of age as on 30.06.2017. Since the respondent-petitioners were hopeful that they will be selected for the said post, they applied for the same. However, by corrigendum dated 13.02.2018, the appellants changed the upper age limit from the cut off date of 30.06.2017 to 01.07.2018. Since the respondent-petitioners were aggrieved by the sudden change in the cut-off date, they filed the writ petition before the learned Single Judge. As mentioned hereinabove, the learned Single Judge has allowed the writ petition in the terms aforementioned. Hence, this appeal before this Court.

Mr. S. Sharat Kumar, the learned Special Government Pleader, submits that in the original Rules known as the Andhra Pradesh Police (Intelligence) Subordinate Service Rules ("the Rules" for short), appointment for the post of Intelligence Branch Assistant (subsequently renamed as "Assistant Analytical

Officer") had two sources for appointment, namely either by transfer, or by direct recruitment. According to Rule 6 of the Rules, the upper age limit for direct recruitment was shown as twenty eight years as on the 1st of July of the year in which notification for selection is made. However, subsequently, an amendment was introduced by G. O. Ms. No. 643, dated 10.05.2007, whereby the categories were increased, namely to include even appointment by transfer. But the upper age limit for both the categories of appointment by transfer, and by direct recruitment was made as twenty eight years as on the 1st of July of the year in which the notification is made.

Secondly, while issuing the notification dated 20.01.2018, inadvertently, the cut-off date was shown as 30.06.2017. The moment the mistake was noticed by the appellants, on 13.02.2018 a corrigendum was issued indicating that the upper age limit has to be *qua* 01.07.2018.

Thirdly, in light of these facts, the learned Single Judge has erred in concluding that the upper age limit is applicable only to the direct recruitees, and not to those who are being appointed by way of transfer. Therefore, the learned counsel submits that the impugned order is against the amended Rule 6 of the Rules. Hence, it is legally unsustainable.

Mr. K. Pavan Kumar, the learned counsel appearing on behalf of the respondent-petitioners, submits that immediately after publication of the notification dated 20.01.2018, the petitioner-respondents had applied for the said post. Therefore, the appellants were not justified in changing the rules of the game in the middle of the selection process. Hence, the cut-off date of

01.07.2018 should not be applied to the respondent-petitioners. Hence, the learned Single Judge is justified in directing the appellants to consider the cases of the respondent-petitioners on the basis of the notification dated 20.01.2018. Therefore, the learned counsel has supported the impugned order.

In rejoinder, Mr. S. Sharath Kumar, the learned Special Government Pleader, submits that, in fact, the contention raised by the learned counsel for the respondent-petitioners before this Court was never even raised before the learned Single Judge. The entire case of the respondent-petitioners before the learned Single Judge was that the upper age limit cannot be applied to those who were being appointed on the basis of transfer. For, according to the respondent-petitioners, the upper age limit was applicable only to the direct recruitees, and not to the petitioners, who were eligible on the basis of transfer. Hence, according to the learned counsel, a new plea is being raised before this Court, which was never raised before the learned Single Judge.

Heard the learned counsel for the parties and perused the impugned order.

A bare perusal of the impugned order clearly reveals that the learned Single Judge has recorded the contentions raised by the respondent-petitioners before the Bench. According to the said contentions, recorded by the learned Single Judge, the respondent-petitioners did not raise the plea that the rules are being changed in midway. In fact, the frontal attack of the respondent-petitioners was that the upper age limit was not applicable to those who were being appointed on the basis of transfer, as it was limited only to the direct recruitees. It is this plea which has been accepted by

the learned Single Judge while allowing the writ petition. However, the learned Single Judge has ignored the amended Rule 6 of the Rules.

The original Rule 6 of the Rules is as under:

> *"No person shall be eligible for appointment by direct recruitment, if he has complete 28 years of age on the first day of July of the year in which the notification for selection is made."*

The amended Rule 6 of the Rules is as under:

> "*No person shall be eligible for appointment by transfer, if he has completed 28 years and in the case of by direct recruitment, if he has completed 28 years of age on the 1st day of July of the year in which the notification for selection is made."*

A bare perusal of these two provisions clearly reveals three aspects: firstly, the original Rule 6 was confined only to the categories of "direct recruitees", and did not include the categories of those who would be appointed on "the basis of transfer".

Secondly, after the amendment, the categories have been enlarged to include those who were appointed on "the basis of transfer".

Thirdly, the cut-off date continues to be same, i.e. first day of July of the year in which the notification is made. The said cut-off date is, in fact, applicable to both the categories, according to the amended Rule 6 of the Rules.

A bare perusal of the notification dated 20.01.2018 clearly reveals that while publishing the notification, the cut-off date was mentioned as 30.06.2017, whereas according to the amended Rule 6 of the Rules, it should be first day of July of the year in which the notification is made. Having realised the inadvertent mistake committed by them, the appellants were justified in issuing the corrigendum on 13.02.2018, and bringing the notification in

consonance with the requirement of amended Rule 6 of the Rules. Therefore, the appellants were justified in correcting the cut-off date from 30.06.2017 to 01.07.2018.

The learned Single Judge has overlooked the fact that according to amended Rule 6 of the Rules, there is, indeed, an upper age limit even for those who are being appointed on "the basis of transfer". Therefore, the conclusion drawn by the learned Single Judge that the upper age limit is not applicable to this category is clearly unsustainable.

For the reasons stated above, the writ appeal is hereby allowed. Consequently, the impugned order dated 27.02.2019 is set aside. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

DR. SHAMEEM AKTHER, J

03rd July, 2019
JSU

High Court for the State of Telangana

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(Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

Date: 03.07.2019

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