

## **Prabhu Dayal Sesma vs State Of Rajasthan & Anr on 28 August, 1986**

**Equivalent citations: 1986 AIR 1948, 1986 SCR (3) 665, AIR 1986 SUPREME COURT 1948, 1986 LAB. I. C. 1928, 1987 ALL CJ 308, 1987 ALL CJ 3, 1986 SCC(CRI) 411, (1986) JT 256 (SC), (1986) MPLJ 816, 1986 SCC (L&S) 731, (1986) 2 LAB LN 745, 1986 (4) SCC 59, (1986) 69 FJR 348, (1986) 53 FACLR 496, (1986) MAH LJ 816, (1986) MPLJ 574, (1986) 3 SERVLR 48, (1986) 2 CURLR 260**

**Author: A.P. Sen**

**Bench: A.P. Sen, B.C. Ray**

PETITIONER:

PRABHU DAYAL SESMA

Vs.

RESPONDENT:

STATE OF RAJASTHAN & ANR.

DATE OF JUDGMENT 28/08/1986

BENCH:

SEN, A.P. (J)

BENCH:

SEN, A.P. (J)

RAY, B.C. (J)

CITATION:

1986 AIR 1948	1986 SCR (3) 665
1986 SCC (4) 59	JT 1986 256
1986 SCALE (2) 362	

ACT:

Rajasthan State & Subordinate Services (Direct Recruitment by Competitive Examination) Rules, 1962-Rule IIB-Age-Determination of-"Must have attained the age of 21 years and must not have attained the age of 28 years"-Interpretation of.

Indian Majority Act, 1875-S. 4-Age-Computation of-How determined.

Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955-Rule 4-"must have attained the age of 21 years and must not have attained the age of 28 years"-Interpretation of.

HEADNOTE:

For direct recruitment to the Rajasthan Administrative Service and allied services of the Government of Rajasthan by a competitive examination to be held in 1983, the Rajasthan Public Service Commission prescribed that the candidate should have attained the age of 21 years on January 1, 1984 and should not have attained the age of 28 years i.e. On the 1st day of January next following the last date fixed for receipt of application. F

The appellant was allowed to appear in the written examination, but later on he was intimated by the Commission that his candidature was rejected on the ground that he had attained the age of 28 years on January 1, 1984 and was therefore ineligible for consideration.

The writ petition filed by the appellant under Art. 226 was allowed by a Single Judge holding that if the date of birth of the appellant was January 2, 1956 he would complete the age of 28 years only at the end of the day of January 1, 1984 and therefore he could not be said to have attained the age of 28 years on that date.

666

on appeal by the respondents, a Division Bench reversed the Judgment of the Single Judge.

In appeal to this Court, on behalf of the appellant it was contended: (i) that the Division Bench erroneously introduced the legal concept of the age of majority as laid down in s. 4 of the Indian Majority Act 1875 for the purpose of interpreting r. 11-B of the Rajasthan State and Subordinate Services (Direct Recruitment by Competitive Examination) Rules 1962 and (ii) that as commonly understood, a person attains a particular age after he had completed a given number of years and there is no reason why the words of r. 11-B "must have attained the age of 21 years and must not have attained the age of 28 years" should not be understood in the ordinary sense.

Dismissing the appeal,

^

HELD: 1. In the absence of any express provision, while calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birthday. One of the well accepted rules for computation of time is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 O'clock midnight and continues until the same hour the following night. This principle is in conformity with s. 4 of the Indian Majority Act 1875.[671F-G]

G. Vatsala Rani, P. M. C. Kini v . Selection Committee for Admission to Medical Colleges, Bangalore Medical

College, Bangalore-2, AIR 1967 Mysore 135, Rex v. Scoffin, LR [1930] 1 KB 741 & Shurey, Savory F. v. Shurey, I, R [1918] 1 Ch. 263, approved.

Halsbury's Laws of England, 3rd edn. vol. 37, para 178 at 100, relied upon.

2. The object and intent in making r. 11B of the Rajasthan State & Subordinate Services (Direct Recruitment by Competitive Examination) Rules, 1962 was to prescribe the age limits upon which the eligibility of a candidate for direct recruitment to the Rajasthan Administrative Service and other allied services is governed. The expression "must not have attained the age of 28 years on the first day of January next following the last day fixed for receipt of application" in r. 11B has to be interpreted by applying the aforesaid principle and not on the basis

667

adopted by UPSC while interpreting r. 4 of the Indian Administrative A Services (Appointment by Competitive Examination) Regulations, 1955 framed by the Central Government in pursuance of r. 7 of the IAS (Recruitment) Rules 1954. [670A-B]

3. The last day fixed for receipt of application in this case, was January 1, 1983. First day of January next following that day would be January 1, 1984. The appellant having been born on January 2, 1956, he had not attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. On the next day i.e. On January 2, 1984, the appellant would be one day more than 28 years. The Division Bench of the High Court was, therefore, right in holding that the appellant was disqualified for direct recruitment of the Rajasthan Administrative Service in the examination held by the Rajasthan Public Service Commission in 1983. [673C-D]

The Court emphasised the need for a provision like the proviso to r. 4 of the Indian Administrative Service (Appointment by Competitive Examination) Regulations 1955 conferring the power of relaxation on the State Government under certain conditions without which a deserving candidate would be rendered ineligible for appointment and advised the Government to consider the question of relaxing the upper age limit in the case of the appellant in order to mitigate the hardship, if otherwise permissible, because he exceeded the upper age limit just by one day. [673E-F] E

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 531 of From the Judgment and order dated 22.5.1984 of the Rajasthan High Court in S.B. Civil Writ Petition No. 114 of 1985.

Sushil Kumar Jain and Sudhanshu Atreya for the Appellant.

B.D.Sharma for the Respondents.

The Judgment of the Court was delivered by G SEN, J The short point involved in this appeal by special leave pertains to the determination of age at a particular point of time. The question is whether the appellant having his date of birth as January 2, 1956 had attained the age of 28 years on January 1, 1984 and was therefore disqualified from being considered for direct recruitment to the Rajasthan Administrative Service under r. 11-B of the Rajasthan State & Subordinate Service (Direct Recruitment by Competitive Examination) Rules, 1962 (for short 'the Rules').

Put very briefly, the essential facts are these. The Rajasthan Public Service Commission invited applications for direct recruitment to the Rajasthan Administrative Service and allied services of the Government of Rajasthan by a competitive examination to be held in 1983. Under the directions issued by the Commission, the minimum age prescribed for candidates was 21 years and the maximum 28 years. It was prescribed that the candidate should have attained the age of 21 years on January 1, 1984 and should not have attained the age of 28 years i.e. On the first day of January next following the last date fixed for receipt of application. The appellant was allowed to appear in the written examination, but by an order dated June 12, 1984, the Assistant Secretary to the Commission intimated the appellant that his candidature was rejected on the ground that he had attained the age of 28 years on January 1, 1984 and was therefore ineligible for consideration. Feeling aggrieved, the appellant moved the High Court under Art. 226 of the Constitution and contended that his date of birth was January 2, 1956 and that he had not attained the age of 28 years on January 1, 1984. His claim was contested by the respondents who pleaded that the appellant had attained the age of 28 years on January 1, 1984 and therefore his form was properly rejected. During the pendency of the writ petition, the High Court by an interim order dated September 14, 1984 directed the Commission to interview the appellant if he was otherwise eligible for being considered except on the ground of age. The appellant was accordingly interviewed but the result was withheld. A learned Single Judge by his judgment and order dated January 19, 1985 held that if the date of birth of the appellant was January 2, 1956 he would complete the age of 28 years only at the end of the day of January 1, 1984 and there he could not be said to have attained the age of 28 years on that date. He accordingly held that the Commission was not justified in rejecting the candidature of the appellant on the ground that he had attained the age of 28 years on January 1, 1984 and therefore was not eligible for consideration.

On appeal, a Division Bench disagreed with the view expressed by the learned Single Judge and reversed his judgment on the ground that the words used in r. 11-B of the Rules are, 'must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application' and not that he should have completed the age of 28 years on that day. They relied upon the undisputed fact that the first day of January next following the last A date fixed for receipt of application in this case was January 1, 1984. Accordingly, they held that the appellant was born on January 2, 1956 and, as such, he had attained the age of 28 years as soon as the first day of January, 1984 commenced. They further held that the appellant had not only attained the age of 28 years, but had also completed the same at 12 o'clock in the midnight of January 1, 1984. According to the learned Judges, on January 2, 1984, the appellant would be one day more than 28 years and, as such, he was disqualified to appear at the examination under r. 11-B of the Rules. The conclusion of

the learned Judges may best be stated in their own words:

"In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birth day."

In coming to that conclusion the learned Judges relied upon the language of r. 11-B of the Rules which prescribes the age limit for the said examination and also referred to s. 4 of the Indian Majority Act, 1875. They have relied on certain decisions of different High Courts, particularly to that in *G. Vatsala Rani represented by guardian and father, P.M.G. Kini v. Selection Committee for Admission to Medical Colleges, Bangalore Medical College, Bangalore-2 represented by the Secretary*, AIR 1967 Mysore 135 and to some English decisions laying down the principle for determination of age.

It is argued that the learned Judges were in error in introducing the legal concept of the age of majority as laid down in s. 4 of the Indian Majority Act, 1875 for the purpose of interpreting r. 11-B. It is said that the purpose of r. 11-B framed by the Government was to prescribe the maximum and minimum age limits for entry into the Rajasthan Administrative Service and allied services of the Government of Rajasthan. It is submitted that as commonly understood, a person attains a particular age after he has completed a given number of years. It is said that there is no reason why the words of r. 11-B 'must have attained the age of 21 years and must not have attained the age of 28 years' should not be understood in the ordinary sense. At first blush, the contention advanced appears to be rather attractive but on deeper consideration it cannot prevail.

Learned counsel for the appellant drew our attention to the fact that the Union Public Service Commission has been interpreting the words 'must have attained the age of 21 years and must not have attained the age of 26 years on the first day of August next following' in the way the appellant contends for. These words are taken from r.4 of the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 framed by the Central Government in pursuance of r. 7 of the Indian Administrative Service (Recruitment) Rules, 1954. Presumably, there would be similar provisions laying down the qualification as to age in other central services as well. R. 4 insofar as material reads:

#### "4. Conditions of Eligibility-

In order to be eligible to compete at the examination, a candidate must satisfy the following conditions, namely: (i) (ii) Age- He must have attained the age of 21, and not attained the age of 28 on the first day of August of the year in which the examination is held:

Provided that the upper age limit may be relaxed in respect of such categories of persons as may from time to time, be notified in this behalf by the Central Government, to the extent and subject to the conditions, notified in respect of each category.. ' Undoubtedly, the Union Public Service Commission has been interpreting the provision as to attainment of age in a like manner. This would be clear from the

advertisement issued by it on December 8, 1984 which is in these terms: "Age limit: (ka) The candidate should have attained the age of 21 years on 1st August, 1985. but should not have attained the age of 26 years, that is, he should not have born before the 2nd August, 1959 and after the 1st August, 1964,"

We are afraid, the interpretation of r. 11-B of the Rules cannot proceed upon the basis adopted by the Union Public Service Commission.

Rule 11-B of the Rules provides:

"11-B. Age. Notwithstanding anything contained regarding age limit in any of the service Rules governing through the A agency of the Commission to the posts in the State Service and in the Subordinate Service mentioned in Schedule I and in Schedule II respectively, a candidate for direct recruitment to the posts to be filled in by combined competitive examinations conducted by the Commission under these Rules must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application. "

It is plain upon the language of r. 11-B that a candidate 'must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application'. Last day fixed for receipt of application in this case, was January 1, 1983. First day of January next following that day would be January 1, 1984. The object and intent in making r. 11-B was to prescribe the age limits upon which the eligibility of a candidate for direct recruitment to the Rajasthan Administrative Service and other allied services is governed. At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birth day. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well-settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day.

In Halsbury's Laws of England. 3rd edn., vol. 37, para 178 at p. 100, the law was stated thus:

"In computing a period of time, at any rate, when counted in years or months, no regard is generally paid to fractions of a day, in the sense that the period is regarded as complete although it is short to the extent of a fraction of a day Similarly, in calculating a person's age the day of his birth counts as a whole day; and he attains a specified age

R on the day next before the anniversary of his birth day."

We have come across two English decisions on the point. In *Rex v. Scoffin*, LR [1930] 1 KB 741 the question was whether the accused had or had not completed 21 years of age. S. 10(I) of the Criminal Justice Administration Act, 1914 provides that a person might be sent to Borstal if it appears to the court that he is not more than 21 years of age. The accused was born on February 17, 1909. Lord Hewart, CJ held that the accused completed 21 years of age on February 16, 1930 and that he was one day more than 21 years of age on February 17, 1930 which was the Commission day of Manchester Assizes.

In *Re. Shurey, Savory v. Shurey*, LR [1918] 1 Ch. 263 the question that arose for decision was this: Does a person attain a specified age in law on the anniversary of his or her birthday, or on the day preceding that anniversary? After reviewing the earlier decisions, Sargant, J. said that law does not take cognizance of part of a day and the consequence is that person attains the age of twenty-one years or of twenty-five years, or any specified age, on the day preceding the anniversary of his twenty-first or twenty-fifth birthday or other birthday, as the case may be.

From Halsbury's Laws of England, 4th edn., vol 45, para 1143 at p. 550 it appears that s. 9 of the Family Law Reforms Act, 1969 has abrogated the old common law rule stated in *Re. Shurey, Savory v. Shurey* (supra).

It is in recognition of the difference between how a person's age is legally construed how it is understood in common parlance. The Legislature has expressly provided in s. 4 of the Indian Majority Act, 1875 that how the age of majority is to be computed. It reads:

"4. Age of majority how computed- In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of s. 3, at the beginning of the twenty-first an-

niversary of that day, and if he falls within the second A paragraph of s. 3, at the beginning of the 18th anniversary of that day."

The Section embodies that in computing the age of any person, the day on which he was born is to be included as a whole day and he must be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. As already stated, a legal day commences at 12 o'clock midnight and continues until the same hour the following night. It would therefore appear that the appellant having been born on January 2, 1956, he had not only attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. On the next day i.e. On January 2, 1984, the appellant would be one day more than 28 years. The learned Judges were therefore right in holding that the appellant was disqualified for direct recruitment to the Rajasthan Administrative Service and as such was not entitled to appear at the examination held by the Rajasthan Public Service Commission in 1983. We affirm the view taken by the learned Judges as also the decisions in *G. Vatsala Rani's case*, (supra).

It is rather unfortunate that the appellant should upon the construction placed on r. 11-B of the Rajasthan State and Subordinate Services (Direct Recruitment by Competitive Examination) Rules, 1962 fail to secure entry into the Rajasthan Administrative Service and allied services of the Government of Rajasthan merely because he exceeds the upper age limit just by one day. The Government ought to consider the question of relaxing the upper age limit in the case of the appellant in order to mitigate the hardship, if otherwise permissible. There is need for a provision like the proviso to r. 4 of the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955, conferring the power of relaxation on the State Government under certain conditions without which a deserving candidate would be rendered ineligible for appointment.

The result is that the appeal must fail and is accordingly dismissed. There shall be no order as to costs.

G  
A.P.J.

Appeal dismissed.