Duddilla Srinivasa Sharma & Ors vs V.Chrysolite on 21 November, 2013

Equivalent citations: AIR 2014 SUPREME COURT 558, 2013 (16) SCC 702, 2014 AIR SCW 136, 2014 LAB. I. C. 1195, (2014) 2 ANDHLD 83, (2014) 1 JLJR 584, (2014) 1 ADJ 46 (SC), (2014) 2 JCR 45 (SC), (2014) 1 SERVLJ 386, (2014) 2 SCT 38, (2014) 2 PAT LJR 36, (2014) 5 SERVLR 674, (2013) 5 ESC 763, 2013 (14) SCALE 192, (2013) 14 SCALE 192, (2014) 140 FACLR 544

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Bench: A.K. Sikri, K.S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 10492/ 2013
(Arising out of Special Leave Petition (Civil) No. 36072 of 2010)

Duddilla Srinivasa Sharma and Ors.
….....Appellants

Versus

V. Chrysolite
….....Respondent

J U D G M E N T

A.K. SIKRI, J.

1. The appellants have filed the present petition under Article 136 of the Constitution of India for Special Leave to Appeal against the final judgment and order of the High Court of Andhra Pradesh at Hyderabad dated 25.10.2010 allowing Writ Petition (C) No. 9437 of 2010 filed by the Respondent herein and quashing the recruitment of the appellants herein to the post of Junior Assistants in the Unit of District and Sessions Judge, Adilabad under category IV of the A.P. Judicial Ministerial Service Rules 2003 pursuant to the Notification dated 4.12.2009 bearing Reference No. Dis. 6184 of

2009.

2. Since the appellants were in service when their recruitment was quashed, along with Special Leave Petition the appellants had also filed I.A. praying for stay of the impugned judgment of the High Court. While issuing notice in the Special Leave Petition on 16.12.2010 this Court had granted interim stay as prayed for. As a consequence, the appellants continue in the employment.

3. Though the notices have been duly served upon the respondent, the respondent has not put in his appearance. Accordingly, we had no option but to proceed with the matter. The Counsel for the appellant was heard at length.

4. Leave granted.

5. The matter relates to the appointment to the post of Junior Assistants in the office of District and Sessions Judge, Adilabad, Andhra Pradesh. The Principal District and Sessions Judge had issued Notification dated 4.12.2009 inviting applications for 17 posts of Junior Assistants. This was in compliance with the directions given by the High Court of Andhra Pradesh. All the appellants herein also applied for the said post. The respondent herein as well as her sister V. Buelah were also the applicants. The educational qualification prescribed for the post included passing of intermediate examination conducted by the A.P. State Board of intermediate examination or any equivalent examination. The appellants as well as the respondent and her sister fulfilled these qualifications. However, since the authorities had received large number of applications, the District Judge decided to raise the bench mark for short listing the candidates and only those candidates having degree qualification were sent letters for participating in the selection process. The Respondent and her sister got excluded in this short listing process.

6. Challenging their exclusion both the respondent and her sister filed the Writ Petition No. 8923 of 2010 in the High Court of Andhra Pradesh. Notice was issued. However when the petition was taken up on 20.10.2010 the Court found that the examination for the said post had already been conducted on 18.4.2010. Thus, vide orders dated 20.4.2010 a Division Bench of the High Court dismissed the Writ Petition with liberty to the respondents to take appropriate action in accordance with law. Thereafter, the respondent filed Writ Petition No. 9437 of 2010 praying for issuance of a writ order or directions, more particularly one in the nature of Writ of Mandamus, declaring action of the authorities in prescribing degree qualification as against the prescribed intermediate qualification shown in the Notification dated 4.12.2009 as illegal, arbitrary and violative of Article 21 of the Constitution of India. Interim orders were passed in this Writ Petition to the effect that any appointment made to the post of Junior Assistants shall be subject to the result of the Writ Petition. This Writ Petition, after contest, has been allowed by the High Court vide impugned judgment dated 25.10.2010 holding that the selection procedure and recruitment process followed by the District Judge for recruitment to the 17 posts of Junior Assistants is unsustainable and the orders appointing the appellants to the said post has been quashed. This is how the appellants are before us questioning the validity of the said judgment.

7. We may record at this stage that for the 17 posts of Junior Assistants, 9,366 applications were received from the candidates who had the intermediate qualification. On the premise that it is very large number for 17 posts, the District Judge decided to short list the candidates. For this purpose reliance was placed on Circular Instructions vide ROC No. 2318/96-C1(1) dated 1.7.1996, Clause 7(E) whereof reads as under:

> "7(E) The Selection Committee shall screen all the applications from the list "A" to "C" and shortlist the same, keeping in view that nor more than 25 candidates will be considered for each vacancy."

8. As per the official respondents even in the notification dated 4.12.2009 vide which applications for the aforesaid post were invited it was categorically provided in Clause (XI) thereof as under:-

> "Mere applying will not give any right to any person to be called for either written examination and interview as the application of the candidates will be short listed as per guidelines issued by Hon'ble High Court from time to time"

> 9. Taking shelter of the aforesaid provisions the authorities tried to justify their action to notify only those candidates who had higher qualification i.e. who were graduates. In this manner the official respondent short listed the application enhancing the minimum qualification to degree and even after short listing more than 3,800 candidates appeared for written examination. However, this explanation given by the official respondents, did not convince the High Court. A perusal of the judgment of the High Court would reveal that the High Court was more swayed by the fact that in the advertisement it was no where stated that there can be short listing of candidates on the basis of academic qualifications. It thus held that since the eligibility prescribed in the A.P. Judicial Ministerial Service Rules, 2003 mentions passing of intermediate examination, all those who fulfil this qualification were eligible to participate in the selection process.

The High Court also referred to guideline 7 (a) of the Instructions dated 1.7.1996 as per which marks secured in the qualifying examination is the criteria enlisted for the parties of screening/ shortlisting of the applicants for the post in Ministerial Services.

10. It was argued by learned Counsel for the petitioner that when large number of applications are received for a particular post, it is always permissible for the recruitment agency to short list the candidates by fixing higher bench mark and such a higher bench mark can be on the basis of academic qualifications as well. The learned Counsel relied upon the following two judgments of this Court in support of his aforesaid plea:-

> (i) Union of India v. S. Vinod Kumar; 1996 (6) SCC 580

> (ii) Andhra Pradesh Public Service Commission v. Baloji Badhavath; 2009 (5) SCC 1.

11. We may record, at the outset, that general observations of the High Court in the impugned judgment to the effect that short listing of the applicants could not be on the basis of higher qualification, may not be correct. In this behalf we may refer to the judgment of this court in the case of S.B.Mathur & Ors. vs. Chief Justice of Delhi High Court & Ors. (1989) Supp.(1) SCC 34. That was a case of departmental promotion. However, zone of consideration was limited to a multiple of 3 to 5 times of the number of vacancies. This criterion was upheld. The test laid down was that criterion adopted should be reasonable, based on rational & intelligible differentia which has nexus to the object sought to be achieved. The justification given by this Court in adopting such a course of action is found in the following passage from the said judgments.

"In the case before us, zone has been restricted by prescribing that out of the total number of candidates who satisfy the eligibility requirement, the zone of consideration will be limited to a multiple of 3 to 5 times of the number of vacancies and the persons to be considered will be determined on the basis of their seniority in the combined seniority list. It appears to us that there is nothing unreasonable in this restriction. It was open to the Delhi High Court to restrict the zone of consideration in any reasonable manner and limiting the zone of consideration to a multiple of the number of vacancies and basing it on seniority according to the combined seniority list, in our view, cannot be regarded as arbitrary or capricious or mala fide. Nor can it be said that such restriction violates the principle of selection on merit because even experience in service is a relevant consideration in assessing merit. We may also refer, in this connection, to the decision of this Court in V.J. Thomas v. Union of India where it has been pointed out that even though minimum eligibility criterion is fixed for enabling one to take the examination, yet the examination can be confined on a rational basis to recruits up to a certain number of years. In adopting such a policy which underlay the Note to clause (4) of Appendix I to the new Rules in question, there is nothing which is arbitrary or amounting to denial of equal opportunity in the matter of promotion. It had the desired effect of not having a glut of Junior Engineers taking examination compared to fewer number of vacancies. Length and experience were given recognition by the Note. The promotion can be thus by stages exposing the promotional avenue gradually to persons having longer experience. This seems to be the policy underlying the Note and there was nothing arbitrary or unconstitutional in it. Such a limitation caters to a well known situation in service jurisprudence that there must be some ratio of candidates to vacancies. If for taking an examination this aspect of classification is introduced, it is based on rational and intelligible differentia which has a nexus to the object sought to be achieved (see SCC p. 13 para 13). In view of what we have pointed out above, the submission of Mr Thakur in this connection must also be rejected."

12. Therefore, what follows from the above is that whenever a particular criterion for short listing is adopted, the validity thereof is to be examined keeping in view whether the same is rationale and having nexus with the objective sought to be achieved. It would depend on the facts and circumstances of each case as to whether a particular criteria is valid or not. At the same time, it also becomes clear that whenever there is a particular provision for short listing the candidates in the Rules or Instructions, then the short listing is to be resorted to in accordance with the criterion mentioned in those Rules or Instructions.

13. In the instant case the candidates who applied were to appear in the qualifying examination and Circular Instruction dated 1.7.1996 issued by High Court administration very categorically provided for the procedure of short listing of candidates as well. Guideline 7(a) of the said Instructions dated 1.7.1996, in this behalf, reads as follows:

> "Ministerial Service: For the purpose of screening/ short listing of the applications for the posts in Ministerial Services, the Committee shall take into consideration the marks secured in the qualifying examination and those who secured first class or 60% and above in the qualifying examination may be preferred to others, subject however to the rider that those having qualification in Type writing (Higher Grade) or Shorthand and those possessing Law Degree are not denied consideration".

14. Two things which emerge from the record, germane to the decision in this case, are as follows:

> (i) As per Rule 8 of A.P. Judicial Ministerial Services Rules 2003, read with Annexure I thereto the educational qualification prescribed for the post of Junior Assistant is intermediate examination conducted by A.P. State Board of intermediate examination for any equivalent examination.

Thus, all those who fulfil this educational qualification become eligible to be considered for the post.

ii) The selection process was to start with qualifying written examination and as per guideline 7(a) of the instructions dated 1.7.1996 this qualifying examination was for the purpose of screening/ short listing of the applicants whereby those who secured first class for 60 percent and above were to be perfect to others. Therefore, a specific criteria for short listing prescribed by the respondents is the marks obtained in qualifying examination.

15. Two judgments relied upon by the learned Counsel were cited before the High Court also and the High Court has dealt with and discussed these cases in its impugned judgment in the following manner:

> "Standing Counsel for the High Court placed reliance on Union of India v. S. Vinodh Kumar ; 1996 (6) SCC 580 and Andhra Pradesh Public Service Commission v. Baloji Badhavath; 2009 (5) SCC 1 of the Supreme Court in support of his contention to uphold shortlisting of candidates by the 2nd respondent in this case. In S. Vinod Kumar (supra), the Supreme Court upheld fixing of cut off marks by the competent authority during the course of recruitment and further upheld that decision not to lower the cut off marks in the interest of general merit, even if some of the vacancies remained unfilled, as such decision cannot be termed arbitrary. The railway administration fixed cut off mark differently for the purpose of filling up vacancies in general category and reserved category. The Supreme Court upheld the same holding that the said fixing of cut off mark is neither arbitrary nor offends the principles of equality enshrined under Article 14 of the Constitution of India. It was further observed therein that power of the employer to fix cut off marks is neither denied nor

disputed and that if the cut off marks were fixed on rational basis, no exception can be taken thereof. The question of fixing cut off mark in the recruitment process arises only after the applicants/ candidates are given opportunity to participate in the selection process. Fixing of cut off marks during the course of recruitment process after giving opportunity to the candidates to participate in the process, is totally different from preventing entry of the candidates to participate in the recruitment process by shortlisting the candidates at the threshold of recruitment process by denying even opportunity to the eligible candidates to participate in the recruitment process by way of attending written test or screening test. Thus, S. Vinod Kumar (supra) is no answer for the respondents to support shortlisting of eligible candidates by applying criterion of possessing higher educational qualifications than prescribed by the 2003 Rules.

In Baloji Badhavath (supra), the Supreme Court upheld rules as well as action of the Andhra Pradesh Public Service Commission in conducting preliminary examination for all the qualified candidates before shortlisting the candidates for the purpose of attending written examination, particularly when several lakhs of candidates applied for recruitment to Group-I services in the State. Of course, the quesiton therein was with regard to non fixing of lesser minimum marks to be secured by candidates belonging to reserved categories when compared to candidates belonging to open category and its validity qua proviso to Article 335 of the Constitution. The Supreme Court noticed the following rule position with regard to short listing:

"35. Rule 4 of the Andhra Pradesh Public Service Commission Rules of Procedure which refers to Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 would apply only where short listing is done. The first part of the said Rule empowers the commission to restrict the number of candidates to be called for interview to such extent as it may deem fit. While shortlisting, however, it may hold a written test or provide for a preferential or higher qualification and experience and only for that purpose it is required to take into account the requirements with reference to Rules 22 and 22 A of the Andhra Pradesh State and Subordinate Service Rules, 1996 and the rule of reservation in favour of local candidates." The Supreme Court further observed:

"By reason of providing for a preliminary examination, the right of the reserved category candidates has not been taken away. The means cannot be allowed to defeat the ends which the constitutional scheme seeks to achieve." With regard to conducting of preliminary examination which is not part of main examination, the Supreme Court observed:

"29. Indisputably, the preliminary examination is not a part of the main examination. The merit of the candidate is not judged thereby. Only an eligibility criterion is fixed. The papers for holding the examination comprise of General Studies and Mental Ability. Such a test must be held to be necessary for the purpose of judging the basic

> eligibility of the candidates to hold the tests." Ultimately the Supreme Court upheld action of Andhra Pradesh Public Service Commission in conducting preliminary test before conducting main examination for shortlisting the candidates for main examination without even fixing minimum marks differently for open and reserved categories of candidates."

16. We do not find any fault in the aforesaid discussion of the High Court pertaining to the said two judgments and are of the opinion that these judgments do not advance the case of the appellants. On the contrary para 29 of Baloja Badhawath case supports the view taken by the High Court.

17. We fail to understand how a person who fulfils the eligibility conditions as per the recruitment rules can be excluded even from appearing in the qualifying written examination by fixing higher educational qualification bench mark. That would be permissible where the post is to be filled by main written examination (with marks obtained therein to be included in the total marks) followed by viva- voice test OR where the post is to be filled by interview mode alone. Thus, having regard to the specific provision of shortlisting, we are of the opinion that the impugned judgment of the High Court has taken the correct view.

18. The High Court has quashed the selections. These appellants were given appointments vide order dated 16.6.2010. However, even after the setting aside of their appointment they have continued in service because of interim order passed by this Court. In this manner they have served for more than 3 years as Junior Assistants. However, since large number of candidates were excluded from consideration by adopting wrong methodology, the appointments of the appellants cannot be saved. At the same time we are of the opinion that the appellants be allowed to continue till the selection process for filling up the said 17 posts of Junior Assistants is taken afresh by the official respondents. This is to ensure that there is no undue disruption in the Ministerial functioning of the District Court, Adilabad. At the same time we direct that the Principal District and Session Judge shall initiate fresh selection for appointment to the aforesaid posts within one month from the date of this order and complete the selection process within six months from thereafter. The appellant shall also be allowed to participate in the said selection process. Those appellants who get selected will continue to be in service and they will be treated in service from their initial appointment vide orders dated 16.6.2010 protecting their seniority. Those of the appellants who fail in the fresh selection process, their services shall be terminated.

19. Subject to the aforesaid observations the present appeal is dismissed, with no order as to cost.

.....J. [K.S. RADHAKRISHNAN] .....J. [A.K. SIKRI] New Delhi November 21, 2013