B. Ramanjini & Ors vs State Of Andhra Pradesh & Ors on 26 April, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2023, 2002 (5) SCC 533, 2002 AIR SCW 2069, 2002 LAB. I. C. 1697, (2002) 4 JT 526 (SC), 2002 (3) SLT 674, 2002 (3) SERVLJ 28 SC, 2002 (4) SCALE 197, 2002 (4) JT 526, (2002) 3 SERVLJ 28, (2002) 2 JCR 155 (SC), 2002 (3) UPLBEC 2006, 2002 (6) SRJ 149, (2002) 2 LAB LN 836, (2002) 2 SCT 1049, (2002) 4 SERVLR 9, (2002) 3 UPLBEC 2006, (2002) 3 SUPREME 617, (2002) 4 SCALE 197, 2002 SCC (L&S) 780

Bench: S. Rajendra Babu, Doraiswamy Raju

CASE NO.:
Appeal (civil) 6461 of 1998

PETITIONER:
B. RAMANJINI & ORS.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT: 26/04/2002

BENCH:
S. Rajendra Babu & Doraiswamy Raju

JUDGMENT:

[With C.A.No. 894/99, C.A. Nos. 3094-3110/2002 [@ SLP(C) Nos. 8772-8788/2000 and C.A. No. 3093/2002 [@ SLP(C) No.7554/99] J U D G M E N T RAJENDRA BABU, J. :

CIVIL APPEAL NO. 6461/1998 An original application was filed before the Central Administrative Tribunal, Andhra Pradesh [hereinafter referred to as 'the Tribunal'] by respondent No.5 for declaration of results of 1998 District Selection Committee written test in Anantapur District, for declaration that it is arbitrary, illegal and violative of Article 21 of the Constitution and for a direction to declare the appropriate results. The Tribunal noticed that originally examinations had been held on 19.4.1998 and 20.4.1998 in Anantapur District to select secondary school teachers mainly for Language Pandit cadre. The Government of Andhra Pradesh by an order

made on 15.5.1998, after noticing certain allegations of mass copying cancelled the examination of the District Selection Committee in respect of Anantapur District and directed further action being taken in the matter. Thereafter examinations were held on 11.7.1998. Results of the same were published on 29.7.1998 and interviews were conducted on 27.8.1998. The Tribunal noticed that inasmuch as the Government had already cancelled the examinations did not consider it fit to order an enquiry into various lapses in Anantapur District and held that the main relief to declare the results had become infructuous. On that basis, the Tribunal disposed of the application. The matter was carried by way of a writ petition before the High Court.

The contentions raised before the High Court are that the Government had cancelled examinations in Anantapur District on the basis of newspaper reports and such issue has been raised on the floor of the Legislative Assembly; that there was no other material, much less, legally acceptable to cancel examinations; that the circumstances and the material are similar to other districts and following the analogy of Anantapur District, the Government ought to have cancelled the examinations in all the districts as they are similarly situated and in not doing so, the Government had acted with discrimination; that the Tribunal ought to have directed the publication of results in all the centres of Cuddapah, but erred in withholding the delcaration of results even ignoring the report of the Secretary to the School Education.

The High Court found that an enquiry had been held in respect of other districts and on the basis of the enquiry concluded that there was no need to cancel the examinations en-mass, as disclosed in the letter dated 24.4.1998 sent by the Deputy Secretary to the Chief Minister an enquiry report had been called for but even in the absence of such an enquiry or report, the Government could not have cancelled the examinations.

The stand of the appellants is that on account of several representations and complaints made by the candidates and write ups in the newspapers, the District Collector, Anantapur District ordered an enquiry to be conducted by the Superintendent of Police on 27.4.1998. On 25.4.1998, Superintendent of Police submitted a report to the Collector pointing out, inter alia, the following irregularities in the conduct of the examinations:

1. There was mass copying.

2. Staff appointed for invigilation was totally inexperienced.

3. The concerned authorities did not appoint sufficient number of invigilators at majority of examination centres.

4. Large number of Superintendents did not attend the duties on the examination day.

5. Several staff were appointed for examination duty only to assist their kith and kin.

6. There was collusion between the invigilating staff and the candidates and thereby the candidates were allowed to sit in the examination halls as they liked.

7. Proper sitting arrangement in the examination centres was not made.

8. The selection of examination centres itself was improper and that the concerned authorities have ignored those centres with better facilities and had selected private schools as examination centres.

9. Outsiders entered into the examination centres with active connivance of invigilators and Superintendents.

10. On the night of 18.4.1998, i.e. one day before the examination, photocopies of question papers reached private coaching centres at different places and were put on sale at a price of Rs.2,000/- each and copies of the question papers were also published in 'Vartha' newspaper on 19.4.1998.

11. About half-an-hour after the examination commenced, key to the multiple choice questions were photocopies and have reached many of the candidates.

The Superintendent of Police also made available the photocopies of the question papers. On the basis of the report of the Superintendent of Police, the Collector made a report to the Government recommending cancellation of the examinations and holding of fresh examinations.

The High Court, however, felt that there was no distinction between the case of Anantapur District and other districts. But it is not very clear from the material placed before us whether letter of the Collector accompanied by the report of the Superintendent of Police had been placed before the High Court or not. If the letter and the report had been placed before the High Court, we are sure, the High Court would not have reached the conclusion it did in the case of the Anantapur District.

In matters of this nature, as to how the courts should approach is explained in the Bihar School Examination Board vs. Subhas Chandra Sinha & Ors. 1970 (1) SCC 618 and Board of High School & Intermediate Education, U.P., Allahabad vs. Ghanshyam Dass Gupta & Ors. 1962 Supp.(3) 36. The facts revealed above disclose not only that there was scope for mass copying and mass copying did take place in addition to leakage of question papers which was brazenly published in a newspaper and the photocopies of the question papers were available for sale at a price of Rs.2,000/- each. These facts should be alarming enough for any Government to cancel the examinations whatever may be the position in regard to other centres. It is clear that so far as the centre at the Anantapur District is concerned, there was enough reason for the Government to cancel the examinations. We have no doubt in our mind that what has weighed with the Government is the letter of the Collector accompanied by the report of the Superintendent of Police, though unfortunately the same does not seem to have been made available to the High Court, which was the basis for making the order on 15.5.1998 cancelling the examination and holding of the fresh examination.

Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a fore-knowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other. Further, in this case, the first examinations were held on 19.4.1998. The same stood cancelled by the order made on 15.5.1998. Fresh examinations were held on 19.7.1998 and results have been published on 29.7.1998. Interviews were however held on 29.7.98 in such cases. The events have taken place in quick succession. The parties have approached the court after the further examinations were held and after having participated in the second examination. It is clear that such persons would not be entitled to get relief at the hands of the court. Even if they had not participated in the second examination, they need not have waited till the results had been announced and then approached the Tribunal or the High Court. In such cases, it would lead to very serious anomalous results involving great public inconvenience in holding fresh examinations for large number of candidates and in Anantapur District alone nearly 1800 candidates were selected as a result of the examinations held for the second time. Therefore, we think, the High Court ought not to have interfered with the order made by the Government on 15.5.1998 in cancelling the examinations and holding fresh examination.

The appeal is allowed and the order made by the High Court in this regard shall stand set aside by dismissing the writ petition and restoring the order of the Tribunal.

CIVIL APPEAL NO. 894/1999 and CIVIL APPEAL NO. 3094-3110/ 2002 [@ SLP (C) Nos. 8772-8788/2000] Leave granted in S.L.P. (C) Nos. 8772-8788/2000.

The High Court of Andhra Pradesh in a batch of writ petitions while dealing with the appointment of teachers in the State of Andhra Pradesh also dealt with a Writ Petition No. 15463 of 1998 - Muthineni Krishna Rao & Ors. vs. Union of India & Ors. - and, inter alia, gave the following directions:-

> (1) that the ratio laid down by this Court in L. Chandra Kumar vs. Union of India, 1997 (3) SCC 261, is the law of the land under Article 141 of the Constitution of India;
>
> (2) that in service matters covered by the Tribunals Act, the remedy of judicial review should be first availed before the Administrative Tribunals before approaching the High Court;
>
> (3) that Section 8 of the Tribunal Act fixing the tenure of appointment as five years would be pro tanto unconstitutional and accordingly Section 8 of the Tribunal Act is read down that the Chairman and the Vice Chairman shall hold the office till the

> attainment of 65 years of age from the date of assumption of office and the Members, both judicial and Administrative, shall hold the office till the attainment of 62 years of age from the date of assumption as such;

(4) that the sitting or retired High Court Judges shall also be considered for appointment to the post of Vice Chairman of the Andhra Pradesh Administrative Tribunal;

(5) that the advocates shall also be considered for appointment as Judicial Members as also Vice Chairman of the Andhra Pradesh Administrative Tribunal;

(6) that in the next vacancy, which is falling vacant in this week because of retirement of Shri Kuppu Rao, Member of the Andhra Pradesh Administrative Tribunal, an Advocate be considered in that place;

(7) that the nodal agency as directed by this Court in L. Chandra Kumar's case (supra) shall be constituted by the Government of India within a period of one month from the date of receipt of a copy of this order;

(8) that in future, in the personnel appointed to man the Administrative Tribunals, the experience on the service law jurisprudence and the concerned constitutional provisions shall be one of the relevant considerations, which is one of the elements of elevation of standards of such personnel;

In L. Chandra Kumar's case (supra) this Court has already expressed its views on the various questions examined by the High Court and in respect of which directions have now been given by the High Court. All that we need to say is, it was not proper for the High Court to have issued any of these directions, particularly directions relating to the scheme of the Act. On that aspect in S.P. Sampath Kumar Etc. vs. Union of India & Ors., 1987 (1) SCR 435, it was stated by this Court :-

> "Section 8 of the Act prescribes the term of office and provides that the term for Chairman, Vice-Chairman or members shall be of five years from the date on which he enters upon his office or until he attains the age of 65 in the case of Chairman or Vice-Chairman and 62 in the case of member, whichever is earlier. The retiring age of 62 or 65 for the different categories is in accord with the pattern and fits into the scheme in comparable situations. We would, however, like to indicate that appointment for a term of five years may occasionally operate as a dis-incentive for well- qualified people to accept the offer to join the Tribunal. There may be competent people belonging to younger age groups who would have more than five years to reach the prevailing age of retirement. That fact that such people would be required to go out on completing the five year period but long before the superannuation age is reached is bound to operate as a deterrent. Those who come to be Chairman, Vice-Chairman or members resign appointments, if any, held by them before joining the Tribunal and, as such, there would be no scope for their return to the place or places from where they come. A five year period is not a long one. Ordinarily some time would be taken for most of the members to get used to the

> service-jurisprudence and when the period is only five years, many would have to go out by the time they are fully acquainted with the law and have good grip over the job. To require retirement at the end of five years is thus neither convenient to the person selected for the job nor expedient to the scheme. At the hearing, learned Attorney-General referred to the case of a member of the Public Service Commission who is appointed for a term and even suffers the disqualification in the matter of further employment. We do not think that is a comparable situation. On the other hand, membership in other high-powered Tribunals like the Income-Tax Appellate Tribunal or the Tribunal under the Customs Act can be referred to. When amendments to the Act are undertaken, this aspect of the matter deserves to be considered, particularly because the choice in that event would be wide leaving scope for proper selection to be made."

So far as the creation of the nodal agency is concerned, this Court in L. Chandra Kumar's case (supra) stated as under :-

> "The suggestions that we have made in respect of appointments to Tribunals and the supervision of their administrative function need to be considered in detail by those entrusted with the duty of formulating the policy in this respect. That body will also have to take into consideration the comments of expert bodies like the LCI and the Malimath Committee in this regard. We, therefore, recommend that the Union of India initiate action in this behalf and after consulting all concerned, place all these Tribunals under one single nodal department, preferably the Legal Department."

Steps have been taken by the Government of India to bring the administration of various Tribunals under a single nodal agency and the views of the State Governments and other departments are also being gathered and majority of them are not in favour of the proposal keeping in view the unique nature of functioning of Tribunals under their control. After receipt of the views from all the different departments, the Government of India stated that 'they will review the matter'. In these circumstances, no particular time could have been fixed by the High Court and the directions issued by it in this regard are wholly unnecessary, particularly when this Court is seized of the matter, it was wholly within its competence to monitor, supervise, control and direct the Government in this regard and it is not at all necessary for the High Court to take upon itself to issue such directions and it should have appropriately left that matter to this Court. To say the least, the High Court has engaged itself the role of a legislative body to rescue those who are in distress by adopting this procedure. Further, when this Court has explained the scheme of the enactment and expressed its views, no directions could have been issued by the High Court on all those aspects and the direction, in particular, in what manner the vacancies arising thereto should be filled up on the retirement of Shri Kuppu Rao, Member of the Andhra Pradesh Administrative Tribunal, was totally uncalled for. The High Court has been carried away by some kind of adventurism and virtually tried to overreach what this Court has stated which course should have been avoided at all costs. These appeals are allowed by setting aside the orders of the High Court and dismissing the writ petitions.

CIVIL APPEAL No 3093/2002 [@ SLP (C) No. 7554 of 1999] Leave granted.

The Director of School Education in Andhra Pradesh issued a notification inviting applications for filling up about 40 thousand posts of Secondary Grade Teachers pursuant to which the appellants and others appeared for the said examination held on 19.4.1998 under the relevant rules for holding the examination prescribing minimum qualifying marks for being eligible for interview. Another rule provides that number of candidates to be interviewed shall be thrice the number of posts advertised. Since the requisite number of candidates could not secure the prescribed minimum qualifying marks in the written examination, the Government issued a notification G.O. Rt. No. 618 dated 18.5.1998 providing for reduction of minimum qualifying marks prescribed under the relevant rules by five marks with a view to ensure filling up of all posts of teachers before the reopening of schools. Subsequently, the appellants were interviewed in May/June, 1998 and on 13.8.1998 the appellants were selected and appointment orders were issued in the proceedings of the Chief Executive Officer, Zilla Parishad, Khammam District.

Since mass copying and leakage of question papers were reported in Anantapur district, the Government having conducted an enquiry ordered re-examination in that particular district alone. Under Rule 3 of the Recruitment Rules each district is a unit with separate District Selection Committee and, as such, the appellants, who belong to Khammam District, have nothing to do with the irregularities reported or the consequent re-examination in the Anantapur District. Several writ petitions had been filed questioning the selections on the basis of aforesaid irregularities, the jurisdiction of Administrative Tribunals for judicial review, etc. and some of the petitioners questioned the constitutional validity of the notification which provides for reduction of minimum qualifying marks in the written examination.

The High Court by an order made on 16.10.1998 held the said notification G.O. Rt. No. 618 dated 18.5.1998 to be illegal as the same was not issued in exercise of rule making power under Sections 78 and 79 of the Andhra Pradesh Education Act, 1982, Section 169(4), 195(4) and 268 of the Andhra Pradesh Panchayats Act, 1994 or under the proviso to Article 309 of the Constitution. The High Court felt that the reduction of qualifying marks could have been done only by modifying the relevant rule and not by exercise of powers other than what was contained under the Andhra Pradesh Education Act. Apart from the selected candidates, the Government of Andhra Pradesh has also filed appeals.

It is contended that under the Andhra Pradesh Direct Recruitment for posts of Teachers (Scheme of Selection) Rules, 1994, Rule 13(a), which is also applicable to the relevant selection, enables the Government to relax the conditions imposed under the Recruitment Rules by reducing qualifying marks by five and hence, the High Court could not have held the impugned action to be illegal. However, it is not necessary to examine that aspect of the matter in the view we proposed to take in the matter.

Selection process had commenced long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings

initiated before it. The writ petitions filed by the concerned respondents ought to have been dismissed which are more or less in the nature of a public interest litigation. It is not a case where those candidates who could not take part in the examination had challenged the same nor was any public interest, as such, really involved in this matter. It is only in the process of selection and standardisation of pass marks some relaxation had been given which was under attack. Therefore, the High Court ought not to have examined the matter at the instance of the petitioners, particularly in the absence of the parties before the court whose substantial rights to hold office came to be vitally affected.

Now, another aspect that remains to be considered is in relation to the directions issued by the High Court regarding carry forward of reservation. Before the High Court a contention was raised that the implementation of the reservation policy is perfunctory and there is no specification of posts for each of the reserved categories. The classification of women, physically handicapped candidates, Ex-serviceman had to be adjusted only within the respective categories of OC, BC, SC and ST of 54%, 25%, 15% and 6% and there was serious error in the same. After having noticed the various errors, the High Court examined the matter with respect to Karimnagar District and found that the reservations contained several anomalies which needed to be rectified. The learned Government Pleader contended that as a result of carry forward system certain excessive posts had been reserved, but the High Court found that for the first time in G.O.Ms No. 65 carry forward system had been made available to the posts which are the subject matter of the writ petitions filed before it and, therefore, the question of carry forward for this selection does not arise at all. Having said it, the High Court found that they do not want to disturb the present selection process which has already been completed. In that event, there was no need for the High Court to have given any directions for future merely on the basis of hypothetical situation as to how the selection had to be made and provide for the manner in which it should be given effect to. As and when fresh selections are made, the same could be sorted out whether they are in conformity with the appropriate provisions of law and the correct reservation policy has been followed or not. For future no particular principle could be set out in a judgment of this nature where nothing had been decided. In the first place, the High Court held that the question does not arise for consideration and in the second place, the selections made are not being disturbed. Therefore, it is wholly uncalled for, for the High Court to have given directions regarding reservations. Therefore, the directions given by the High Court thereto shall stand set aside.

The appeals shall stand allowed and the order made by the High Court shall stand set aside and the writ petitions filed by the petitioners shall stand dismissed. However, there shall be no order as to costs.

...J. [S. RAJENDRA BABU] ...J. [DORAISWAMY RAJU] APRIL 26, 2002.