

Mohd. Riazul Usman Gani And Ors vs District And Sessions Judge, Nagpur And ... on 11 February, 2000

Equivalent citations: AIR 2000 SUPREME COURT 919, 2000 (2) SCC 606, 2000 AIR SCW 512, 2000 (2) UPLBEC 1696, 2000 (3) SERVLJ 16 SC, 2000 (4) LRI 449, 2000 (1) SCALE 508, (2000) 2 ALLMR 655 (SC), (2000) 2 JT 52 (SC), 2000 (2) JT 52, 2000 (1) UJ (SC) 457, (2000) 3 SERVLJ 16, 2000 (3) SRJ 152, (2000) 2 UPLBEC 1696, (2000) 1 SUPREME 460, (2000) 1 ANDHWR 205, 2000 SCC (L&S) 305, (2000) 84 FACLR 989, (2000) 2 LAB LN 57, (2000) 2 MAH LJ 392, (2000) 2 MAHLR 335, (2000) 2 SCT 10, (2000) 2 SCJ 199, (2000) 1 SERVLR 671, (2000) 1 SCALE 508, (2000) 2 ESC 956, (2000) 2 BLJ 581, (2000) 1 CURLR 629, (2000) 2 ANDHLD 63, (2000) 3 BOM CR 287

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Bench: S. Saghir Ahmad, Dp. Wadhwa

CASE NO.:

Appeal (civil) 1010 of 2000

PETITIONER:

MOHD. RIAZUL USMAN GANI AND ORS,

RESPONDENT:

DISTRICT AND SESSIONS JUDGE, NAGPUR AND ORS.

DATE OF JUDGMENT: 11/02/2000

BENCH:

S. SAGHIR AHMAD & DP. WADHWA

JUDGMENT:

JUDGMENT 2000 (1) SCR 771 The Judgment of the Court was delivered by D.P. WADHWA, J. Leave granted.

Appellants are aggrieved by judgment dated December 1, 1997 of the Bombay High Court (Nagpur Bench) dismissing their writ petition filed under Article 226 of the Constitution wherein they had sought quashing of selection of peons in the Subordinate Judiciary as contrary to relevant rules for recruitment to Class III and IV services in Subordinate Judicial Service in the State of Maharashtra. Appellants were also aspirants for these posts.

Under the Recruitment Rules for recruitment to Class III and IV services in Subordinate Judicial Services procedure is prescribed for recruitment to the posts of various categories of officers in civil

and criminal courts in a district. Recruitment is to be made by District Judge strictly in order of seniority from the list of candidates to be prepared as under:

- (a) In preparing the list the District Judge shall act upon the advice of a committee known as the Advisory Committee.
- (b) Such list shall contain names of candidates for recruitment to the different categories referred to above in separate parts for each category.
- (c) Subject to Rule 3 no candidate whose name is not on such list shall be employed in any of the above categories in any Civil or Criminal court.
- (d) The list prepared by the Advisory Committee shall be final.

Rule 2 provides for constitution of the Advisory Committee, which shall consist of District Judge as the chairman and other judicial officer, mentioned therein. Necessary educational and other qualifications, which would qualify a candidate for being enlisted in various posts, are prescribed by Rule 8, For 'Bailiffs' and 'Peons' these are as under :

"Bailiffs: (i) Not lower than a pass in the Regional Language Final Examination or in the examination of standard VII of a recognised School with Marathi as the medium of instruction.

(ii) Active habits and temperament.

Peons : Not lower than a pass in the Examination of Standard IV in the Regional Language." There were 66 posts of peons in the District and Sessions Court, Nagpur. On advertisement being issued for filling up these posts as many as 14,965 applications were received. The Advisory Committee constituted under the Rules laid four criteria in short-listing all the applicants. The said criteria are as under :

- "(a) The incomplete applications namely not supported by certificate and testimonials regarding educational qualification, date of birth, caste certificate if belonging to backward class, should be rejected.
- (b) The applications not accompanied with copies of certificates and testimonials attested by Gazetted Officer should be rejected.
- (c) The applications of the candidates from backward community claiming reservation and concession of upper age limit not accompanied with caste certificate or attested copy of such certificate issued by the competent authority should be rejected.

(d) Applications of those candidates possessing minimum educational qualification of passing IVth vernacular standard and/or educated upto passing of VIIth Standard only should be considered for the interview to the posts of peons and those who have studied above VIIth vernacular standard may not take proper interest in the work of peons and, therefore, should not be called for interview."

It is the fourth criterion, which is under challenge being arbitrary, Under the Rules for the post of a peon educational qualification prescribed is not lower than a pass in examination of Standard IV in the regional language. Out of the applications received the number of applicants falling in the category of having passed IV to VII Standards was 1340. The appellants did not fall in that category as they were having higher educational qualifications. Out of 1340 applicants, who fell in the category of those who passed IV standard up to VII standard, only 384 candidates were found to be eligible satisfying all the full criteria laid down by the Advisory Committee, 956 candidates were found to be ineligible on one ground or the other.

In the counter affidavit filed in the High Court on the writ petition of the appellants stand of the Bombay High Court and the District and Sessions Judge, Nagpur was that the persons who were having higher educational qualifications do not take proper interest in the work of peons and that they generally feel shy and below dignity when required to do the work of sweeping the court rooms, chambers of Judges, etc. It was submitted this was based on the experience gained. It was also stated that apart from the fact that persons with higher educational qualifications thought it below dignity to do ordinary manual jobs, they would also get frustrated in the absence of proper avenues for promotion, which would result in dislocation of the working of the courts.

Relying on decisions of this Court in *Government of A.P. v. P. Dilip Kumar*, [1993] 2 SCC 310, *M.P. Public Service Commission v. Navnit Kumar Potdar*, [1994] 6 SCC 293 and *Union of India v. T. Sundaraman and Others*, [1997] 4 SCC 664, wherein this Court upheld the principle of short-listing in recruitment process, High Court in its impugned judgment also said that the Supreme Court clearly held that it was open to the authority concerned to restrict the zone of consideration amongst the eligible candidates in any reasonable manner and that as to what would be the reasonable manner in a given case would undoubtedly depend on the facts of each case. Reference in this connection was made to another decision of this Court in *S.B. Mathur and Others v. Hon'ble the Chief Justice of Delhi High Court and others*, AIR (1988) SC 2073. Reference was also made by the High Court to yet another decision of this Court in *T.R. Kothandaraman and Others v. Tamil Nadu Water Supply and Drainage BD and Others* [1994] 6 SCC 282, para-23 wherein this Court said that too much emphasis on higher education may even cause dent to the cause of social justice as it would be the proper section of the society, which would be deprived of its legitimate expectation and that harmony has to be struck by maintaining reasonableness in the ratio between the call of social justice and the need for higher education without in any way jeopardising the principal object of qualification. No particular ratio can be spelt out, which would satisfy these requirements, the reasonableness of the ratio depending upon the facts of each case.

In the case of *M.P. Public Service Commission v. Navnit Kumar Potdar*, [1994] 6 SCC 293 for the purpose of short-listing a longer period of experience than the minimum prescribed was used as a

criterion by the Public Service Commission for calling candidates for interview. This Court upheld the short-listing of candidates based on some rational and reasonable basis.

In the case of *Government of Andhra Pradesh v. P. Dilip Kumar*, [1993] 2 SCC 310 this Court said that it was always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher education to enter the zone of consideration.

In the case of *Union of India and Another v. T. Sundararaman and Others*, [1997] 4 SCC 664 Union Public Service Commission invited applications for the posts of Assistant Professors of Medicines, The essential qualification for the purpose were set out in the application and one of the qualifications was: at least three years teaching experience in the speciality concerned as a Lecturer/Tutor/Demonstrator/Senior Resident/Registrar after obtaining the Post Graduate degree qualification. It was also stated in the advertisement that prescribed essential qualifications were the minimum qualifications and the mere possession of minimum qualifications does not entitle the candidate to be called for interview. Where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to interview all the candidates, the Commission may restrict the number of candidates to a reasonable limit on the basis of qualification and experience higher than the minimum prescribed in the advertisement or by holding a screening test. 37 applications were received for three posts. The Commission short-listed the candidates on the basis of four years experience or more. As a result 20 candidates were called for interview. Respondent did not qualify for the short-listing. He challenged the selection which was upheld by the Central Administrative Tribunal, Madras Bench. On appeal filed by Union of India this Court said that the procedure adopted by the Commission was a legitimate. The decision of the Central Administrative Tribunal was set aside.

Applying the principles laid down by this Court in the aforesaid decisions High Court held that the four criteria adopted by the Advisory Committee for short-listing cannot be said to be unreasonable. High Court held that fourth criterion was based on actual experience as reflected in the affidavit filed by the Additional Registrar of the High Court and that criterion was not in any manner unreasonable. Writ petition was dismissed.

Laying of criteria when there are large number of candidates is permissible but that criteria must be reasonable and not arbitrary having regard to the post for which recruitment is made.

We, however, do not think that principle laid by this Court in the case of *T.R. Kothandaraman & Ors, v. Tamil Nadu Water Supply & Drainage BD & Ors.*, [1994] 6 SCC 282 has been correctly applied by the High Court in the present case. Question before the Supreme Court concerned with classification based on higher educational qualification for the purpose of promotion in the service. This is how this Court said (para 16) :

"From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification relating to promotion in

public service :

- (1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.
- (2) Higher educational qualification can be the basis not only for bailing promotion, but also for restricting the scope of promotion.
- (3) Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later.

High Court relied upon observation made in para 23 of the judgment. We may consider the circumstances under which those observations came to be made. The appellants in this Court had challenged the validity of Rule 2(b) of the Special Rules for the Tamil Nadu Agriculture Engineering Service being violative of Article 16 of the Constitution. Rule 2(b) prescribed ratio of 3:2 for direct recruits and promotees, the former being degree holders and the later diploma holders. This Court observed that higher educational qualification has relevance in so far as the holding of higher promotional post is concerned, in view of the nature of the functions and duties attached to that post. Diploma holder Assistant Engineers to become eligible for promotion to the post of Executive Engineer could be considered only if they were to have "exceptional merit" in work. It was found that in other departments where separate lists were being maintained ratio of degree holders and diploma holders was 3:1 whereas in the present case ratio of 3:2 was recommended taking into account the large number of diploma holders. It was also found that a degree holder has to put in six years of study at college level after leaving school stage whereas diploma holders have only 3 years study at the institute of technology after school stage. Because of that, the Court said, higher technical caliber in degree holders is presumed. Then this Court said (paras 23 and 24) :

The next question to be examined is about the extent of the preference given to the degree-holders. At this stage, we may first give our reasons as to why this aspect is amenable to examination. The rule-making authority having made a diploma-holder eligible for promotion, it follows that a diploma-holder does not suffer from such an infirmity as to make him totally unfit for holding the higher post. If that is so, question is whether the ratio could be made so inequitable as to mock at the guarantee of equality? The right which has been conferred by one hand cannot be taken away by another; nor can the right be converted to a husk. It must continue to be a meaningful right. Too much emphasis on higher education may even cause dent to cause of social justice, as it would be the poorer section of the society which would be deprived of its legitimate expectations. The preference given to the degree-holders would, at the same time, give fillip to the desire to receive higher education, as such persons would always be favourably placed as compared to the lesser educated ones. A harmony would thus be struck, by maintaining reasonableness in the ratio, between the call of social justice and the need for higher education, without in any

way jeopardising the principal object of classification. But then, no particular ratio can be spelt out which would satisfy these requirements; the reasonableness of the ratio shall depend on facts of each case.

In the present cases the ratio is 3:2 and we regard the same as reasonable in view of what has been stated above relating to adoption of this ratio. Having felt satisfied about the permissibility of the classification also, the cases challenging the constitutionality of the quota for promotion as fixed in this service have to be dismissed."

In the present case we find that the candidates with higher education than Standard VII were completely shutout for being considered for the posts of peons. Recruitment Rules also provide for promotion. Rule 3(ii) we may quote :

(ii) The District Judge may promote -

(a) a Peon, a Watchman, a Gardener, or a Sweeper to the post of Bailiff;

(b) a Peon, a Watchman, a Gardner, a Sweeper or a Bailiff to the post of a Regional (Language) Section Writer or a English Section Writer or a Clerk; and

(c) a Peon, a Watchman, a Gardner, a Sweeper or a Bailiff, a Regional (Language) Section Writer and English Section Writer or a Clerk to the post of Stenographer." Now the qualifications for appointment to the posts of Clerks and Regional (Language) Section Writers are :

"Clerks: (i) Not lower than a pass in the S.S.C. or other examination recognised as equivalent to the S.S.C. Examination,

(ii) A reasonably good speed in typing.

(iii) Adequate knowledge of the regional language of the Court in the District.

English Section Writers : (1) Not lower than a pass in the S.S.C. or other examination recognised as equivalent to the S.S.C. Examination.

(ii) A reasonably good speed in typing.

Regional Language Section Writers: - Not lower than a pass in the Regional Language Final Examination or in the examination of Standard VII of a recognised school with Marathi as the medium of instructions."

If the appointment of a candidate to the post of peon is restricted to his having qualified up to Standard VII he will have no chance of promotion to the post of Regional Language Section Writer

or a Clerk. It is not that qualifications required for Regional Language Section Writer and Clerk are to be acquired by a peon during the course of his service. During the course of hearing we were referred to a few applications submitted by peons who are already working wherein they had prayed for their being considered for appointment to post of clerks since they had acquired requisite qualifications for that post. On this an argument is sought to be based that those peons with higher qualifications are not interested in their work as peons. We can give no credence to such an argument when Recruitment Rules themselves prescribe that post of a clerk can be a promotional post for a peon having requisite qualification. There is nothing wrong if a peon sends in his request for being considered to be promoted as a clerk.

We do not know what are the duties attached to the post of a peon. But perhaps one thing peons are not required to do the work of sweepers or gardeners. Qualifications for gardeners and sweepers have been separately provided in the Recruitment Rules and the only qualification for both the categories of these posts is "good physique and also to carry out the duties attached to the post." If an employee does not perform the duties attached to the post disciplinary proceedings can certainly be taken against him. An employer cannot throw up his hands in despair and devise a method denying appointment to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties. Qualification prescribed is minimum. Higher qualification cannot become a disadvantage to the candidate.

A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification, than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application.

We do not think, therefore, that the criterion four as laid by the Advisory Committee constituted under the Rules and upheld by the High Court is in any way reasonable or rational. By adopting such a course High Court has put its stamp of approval to another type of reservation for recruitment to the service which is not permissible, A poor person can certainly acquire qualification equivalent to S.S.C. Examination and not that he cannot go beyond Standard VII. Perhaps by restricting appointment to candidate having studied only up to Standard VII High Court may not be encouraging dropouts.

Considering whole aspect of the matter we must upset the fourth criterion laid by the Advisory Committee. Appellants have been wrongly denied of their right for being considered for the post of peon. However, in the counter affidavit filed before us by the Additional Registrar (Legal), High Court on behalf of the District & Sessions Judge and the High Court it has been stated that process of selection of peon has already been completed and the candidate from the select list are being posted as peons. In this view of the matter, we would not like to disturb the appointment of the candidates already selected. Thus, though we set aside the impugned judgment of the High Court, we will not issue any further directions for cancelling the appointments of the candidates already selected and for starting of the whole selection process afresh.

The appeal is, therefore, disposed of in above terms. In the cir- cumstances, however, there shall be no order as to costs.