

CASE NO.:  
Appeal (civil) 5430-5434 of 2004

PETITIONER:  
SANJAY KUMAR AND ORS.

RESPONDENT:  
NARINDER VERMA AND ORS.

DATE OF JUDGMENT: 08/05/2006

BENCH:  
B.N. SRIKRISHNA & LOKESHWAR SINGH PANTA

JUDGMENT:  
JUDGMENT

SRIKRISHNA, J. :

This group of appeals arises from the same set of facts and from the same impugned judgment of the Division Bench of the High Court of Jammu & Kashmir, hence, it would be convenient to decide all these appeals by a common judgment.

On 12.6.1997 the Government of Jammu & Kashmir, Power Development Department, by a notification amended the Jammu & Kashmir Power Development Department (Subordinate) Service Recruitment Rules, 1981 (hereinafter referred to as "the Rules"). The amendment was as under:

"(A) In part 'A' of Schedule II (Executive), for class-I, the following shall be substituted, namely :-

'I' 'A' Junior Engineer (Elect) 100% by promotion from  
Grade-I (Selection category 'B' provided that :-  
Category) 2125-3600

(a) Degree Holders possess at  
least 5 years service as  
such;

and

(b) Diploma Holders possess at  
least 10 years service as  
such

'B' Junior Engineer (Elect) Bachelors Degree in Electric/Electronic  
Grade-II 1400-2300 Engineering or three years Diploma  
in Electric/Electronic Engineering.

- (a) 85% direct recruitment; and
- (b) 15% by promotion from amongst  
three years Diploma Holders in  
Electric/Electronic Engineering

from Recognised Polytechnic  
Institution having at least 5 years  
service in Class-III category 'A'.

B. The following Notes shall be added after note (2) at the end of the Part (A) of the schedule :-

(3) 'The existing Junior Engineers (Degree Holders) in the pay scale of 2000-3400 (revised) shall, however, retain their own pay scale till they are promoted as Assistant Engineers (Elect). The posts thus vacated by them on their promotions shall be automatically (sic) converted into the scale of Junior Engineer Grade-II.

(4) Degree Holders in Electric/Electronic Engineering on recruitment as Junior Engineer Grade-II shall be given a higher start on Rs. 1720 per month in the pay scale of Rs. 1400-2300.

(5) The Diploma Holders having acquired AMIE (Section 'A' & 'B') qualification shall also on appointment as Junior Engineers Grade-II be entitled to a higher start of Rs. 1720 per month.

(6) Similarly, a Diploma Holder functioning As (sic) Junior Engineer Grade-II and drawing pay at a stage lower than Rs. 1720 per month shall be entitled to refixation of his pay at the stage of Rs. 1720 per month on acquiring AMIE (section A&B) qualification'."

The amended Rules require that for being eligible as a Junior Engineer (Electrical) a candidate must possess either a Degree or Diploma in Electric/Electronic Engineering. The Rules nowhere provide for any preferential treatment for either category of candidates. The Power Development Department made a requisition to the Service Selection Recruitment Board (hereinafter referred to as "the Board") for selecting Junior Engineers (Electrical) Grade-II. On a query raised by the Board the Power Development Department clarified on 19.9.1997 that "there is no need/justification for any quota to be laid down for intake of Diploma holders or Degree holders through direct recruitment as Junior Engineers (Electrical/Electronic)" and, further that, selection for Junior Engineers had to be entirely on the basis of merit. It was further clarified that "The methodology of determining merit amongst candidates having different educational qualification should be decided by the SSRB, to whom these posts have been referred."

An advertisement was issued inviting applications for the post of Junior Engineers (Elect) Grade-II in the grade of Rs. 1400-2300 (pre-revised). The prescribed qualification for the said post was indicated in the advertisement as "BE/AMIE (A&B) India/ Diploma in Electric/Electronic Engg." Several candidates holding either a Diploma or a Degree, as prescribed, applied for the post. They were called for interviews for selection. Out of the 2229 candidates, who had applied, about 300 were selected and put on the Selection List and some more candidates were maintained on a waiting list. The result of the selection process was published on December 25, 1998. The selected candidates joined their duties some time in 1999. Out of the 300 selected candidates, 153 were Degree holders and 147 were Diploma holders. Some of the unsuccessful Degree holders challenged the Selection List by their writ petitions. The learned Single Judge who heard the writ petitions took the view that the writ petitioners having participated in the selection process and failed, were estopped from challenging the criteria adopted for the selection. The learned Single Judge also held that the criteria adopted had been made applicable uniformly to all the candidates; 80 points had been given for educational qualifications and 20 marks had been assigned for the viva voce, which was a proper method of selection and no objection could be

taken thereto. In this view of the matter, by a judgment dated 30.4.1999 the learned Single Judge dismissed the writ petitions.

A number of Letters Patent Appeals were carried against the dismissal of the writ petitions. The Division Bench of the High Court by the common impugned judgment set aside the judgment of the learned Single Judge, allowed the Letters Patent Appeals and directed re-framing of the criteria for selection for assessment of the candidates on the basis of re-framed criteria. Being aggrieved thereby, the present appeals have been filed. Some are by the selected candidates, some by the unselected candidates and some by the Selection Board.

The Division Bench observed, "The Degree holders being higher in qualification and that the Executive while prescribing the eligibility qualification has not prescribed the method and procedure to assess the suitability and merit of the candidates possessing un-equal or superior qualification to that which can make the post functional. The Degree holders cannot thus be equated with Diploma holders. Criterion of 80% marks cannot be applied uniformly to both differently situated. Therefore, the selection to the extent cannot be maintained and the judgment of the learned Single Judge needs interference. "In this view of the matter, while allowing the Letters Patent Appeals, the High Court gave the following directions :

"I. Criteria, reserving 80 marks for eligibility qualification and applying these marks uniformly, proportionate to the marks secured in Diploma and Degree Courses, to assess the merit and suitability of the Degree holders vis-a-vis Diploma holders is set aside.

II. 20 marks for Viva-voce are maintained. The Viva-voce test and its award by the Selection Committee, as a consequence of the Viva-voce, is also maintained.

III. The Board shall re-frame the criteria within 80 marks, reserved for eligibility qualification, giving adequate weightage to the higher qualification of Degree; and

IV. The candidates shall be re-assessed by the Board according to the re-framed criteria for determining their merit and suitability and issue the Select List before August 31, 2000."

The grievance of the Diploma holders-appellants in these appeals is that the High Court was wholly, unjustified in interfering the process of selection and directing the State to grant higher weightage to Degree holders, although there is no such weightage given to Degree holders under the Rules. Learned senior counsel appearing for the appellants pointed out that the Rules, as framed, had never been challenged in the writ petitions. He urged that once the rules are to be followed, it is not open to the High Court to ignore the rules and introduce a criterion which is not even contemplated by the applicable rules.

Our attention was invited to the amended Rules, which do not make a distinction between Degree holders and Diploma holders at the stage of direct recruitment. However, at the stage of promotion, such a distinction is maintained. The post of Junior Engineer (Elect) Grade-I is a promotional post, which is to be filled only by promotion from the category of Junior Engineer (Elect) Grade-II. While the appointment to the latter feeder category was equally open to Degree holders or Diploma holders without distinction : For the purposes of promotion to higher post of Junior Engineer (Electrical) Grade-I, Degree holders need to possess only a minimum of 5 years service while Diploma holders require at least 10 years service. Further, the Rules also make a distinction between Degree holders and Diploma holders, in that the Degree holders on recruitment as Junior Engineer (Elect) Grade-II are given a higher start in the pay scale. Learned counsel, therefore, contended that where the Executive thought it

necessary to make a distinction between degree holders and Diploma holders by according higher weightage to Degree holders, the Rules had been so framed. As indicated in the Rules, the higher weightage to Degree holders was available by way of a higher start and at the time of promotion to the higher category. Such differentiation or difference in weightage was not available under the Rules at the time of direct recruitment to the lower post of Junior Engineer (Elect) Grade-II. It was, therefore, submitted on behalf of the appellants that, the High Court was not justified in making a departure from the Rules and introducing its own criteria of higher weightage in favour of Degree holders in the manner of recruitment.

Learned counsel further contended that, once that Rules had been framed in exercise of the Constitutional powers by the Executive (which were not even challenged in the writ petitions), it was not open to the High Court to depart therefrom. It is, therefore, contended that the Rules have an inbuilt system of higher weightage in favour of Degree holders, as already indicated, and if further weightage were to be given, as directed by the High Court, then the Diploma holders, would be totally out of the fray. Any such additional weightage given by the High Court would be unjust and inequitable. The plea of the Diploma holder is supported by the learned counsel appearing for the Board in Civil Appeal Nos. 5446-5450/2004. The learned counsel also urged that there was no challenge made to the Rules and, therefore, it was impermissible for the High Court to depart from the Rules.

Reliance was also placed by the learned counsel for the appellants on the judgment of this Court in *University of Cochin v. N.S. Kanjoonjamma and Ors.*, [1997] 4 SCC 426 to canvass that where the concerned rules are not challenged and the candidates participate in the selection process and become unsuccessful, such candidates are estopped from challenging the procedure thereafter. The reliance on the judgment appears to be justified.

Our attention was also drawn to the observations of this Court made in *Union of India and Anr. v. N. Chandrasekharan and Ors.*, [1998] 3 SCC 694 (Vide paragraph 13) in support of the same proposition.

Mr. Raju Ramachandran, learned senior counsel appearing for the Third Respondent in Civil Appeal Nos. 5430-34/2004, however, urged that one of the grounds of challenge before the Division Bench was that the statutory qualification was discriminatory. He, therefore, contended that in view of the said contention it was open to the High Court to read down the offending rule instead of striking it down. Having read the portion of the impugned judgment on which this argument is based, we are not satisfied that such a contention was really urged. It is not in dispute that the writ petitions were not directed towards challenge to the applicable Rules. Merely because an argument was made in the Letters Patent Appeal that the Rules were discriminatory, it was not open to the High Court to have struck down the Rules. The Letters patent Appeals could have proceeded only on the basis of the writ petitions and the judgment of the learned Single Judge, which was being challenged. There being no substantive challenge to the Rules, there was no question of striking down the Rules, nor was there any situation of reading down the Rules. Reliance placed by Mr. Raju Ramachandran on the judgment of this Court in *Umesh Chandra Shukla v. Union of India and Ors.*, [1985] 3 SCC 721 is of no avail. That was entirely a different situation where this Court was of the view that the applicable Rules had not been followed as the select list had been interfered with by exercising a power which did not arise from Rule 18 of the applicable Rules to fix the minimum marks in order to include candidates in the final select list. Such is not the situation before us and, therefore, this authority is of no help to us.

The contention of Mr. Kaushik, learned counsel appearing in Civil Appeal No. 5451/04 for the selected Degree holder candidates also echoes the argument of Mr. Ramachandran. He further contended that one of the

appellants in Civil Appeal No. 5451/04 is a disabled person, who has not been given his right under the provisions of the Jammu & Kashmir Persons with Disabilities (Equal Opportunities, Protection of Right & Full Participation) Act, 1998 (hereinafter referred to as the "1998 Act"). He, therefore, contended that the appellant who has been appointed and continues to be in service since 2002 ought not to be disturbed. We express no opinion on this issue. If it is found by the concerned authority that the appellant is a disabled person entitled to be appointed by reason of the provisions of the 1998 Act, then his service may not be disturbed.

The respondents in Civil Appeal Nos. 5435-5439/04, and the interveners who are now in the Select List as a result of the new criteria imposed by the impugned judgment of the High Court, contended that the new criteria formulated by the State pursuant to the direction of the High Court are more sophisticated and enable better appreciation of merit than the ones which were there under the Rules. It is contended that since the new criteria are more rational, this Court should refrain from interfering with the judgment of the High Court. Learned counsel for the respondents also claimed that since these screening and selection of the candidates had already been taken place in accordance with the new criteria, we should direct their retention in service.

Conclusion :

Civil Appeal Nos. 5430-5434/2004, 5435-5439/2004, 5440-5444/2004, 5446-5450/2004 and 5451/2004 :

Having heard the learned counsel on both sides for the different contending parties, we are of the view that the impugned judgment of the High Court needs to be interfered with. As already observed, there was no challenge to the Rules in the writ petition. The learned Single Judge was, therefore, justified in applying the Rules and upholding the selection process made by the State authorities. It was wholly unjustified on the part of the Division Bench to have interfered with the selection process on the basis of the criteria which were not laid down in the Rules and that too on an erroneous appreciation of the Rules. The High Court failed to see that the Rules made no distinction, whatsoever, between Degree holders and Diploma holders at the stage of recruitment for the purpose of minimum qualifications. In other words, no distinction was made between the two categories at the stage of recruitment, but a greater weightage was given to the Degree holders in the post-recruitment period in the form of a higher starting pay and also lesser number of years service requirement for qualifying for promotion to the higher post. We agree with the contention expressed by the learned counsel for the appellants that there was sufficient inbuilt balance maintained between the two categories of candidates and the impugned judgment of the High Court completely throws the Rules out of balance. What the Executive did not think fit to do by prescription in the Rules, could not have been done by a judicial fiat.

In the result, the appeals are allowed and the impugned judgment of the Division Bench of the High Court is set aside, and the judgment of the learned Single Judge dismissing the writ petitions is affirmed.

Civil Appeal No. 5445/2004 :

Consequently, this appeal arising out of the judgment of the Jammu & Kashmir High Court in Contempt Petitions Nos. 150, 152, 159 and 160 of 2001 is dismissed.

No order as to costs.

JUDIS