

CASE NO.:
Appeal (civil) 5274 of 2007

PETITIONER:
B. Ramakichenin @ Balagandhi

RESPONDENT:
Union of India and others

DATE OF JUDGMENT: 16/11/2007

BENCH:
A.K. Mathur & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5274 OF 2007
[Arising out of Special Leave Petition(Civil) No. 16909/2006]

MARKANDEY KATJU, J.

1. Leave granted.
2. This appeal has been filed against the final judgment and order dated 19.9.2006 of the High Court of Madras in Writ Petition Nos. 9521 and 18563 of 2000 and Writ Petition No. 21870 of 2001.
3. Heard learned counsel for the parties and perused the record.
4. The appellant (respondent No. 3 in the Writ Petition) applied for the post of Deputy Director (Agriculture) in the Agriculture Department, Government of Pondicherry. That post was to be filled up by direct recruitment in pursuance of the advertisement issued by the Union Public Service Commission (hereinafter in short 'UPSC') dated 23.5.1998 inviting applications from eligible candidates.
5. The appellant states that he was fully qualified for the post, but he was not called for the interview although similarly placed candidates had been so called.
6. In this connection it may be mentioned that in the advertisement for the post issued by the UPSC, essential qualifications mentioned therein were as follows :

"Essential :

A.: Educational : M.Sc. Degree in Agriculature from a recognized University or institution.

B: Experience : Two years experience in extension work/soil/Input Analysis."

There was no mention in the advertisement that the experience of two years must be after obtaining the M.Sc. degree.

7. It appears that the UPSC resorted to short listing and did not call the appellant for the interview because he did not have two years experience in extension work/soil/Input Analysis after obtaining the M.Sc. degree in agriculture. He no doubt had the requisite experience, but that was obtained

before he got his M.Sc. degree. The UPSC called only those candidates for interview who had got the experience after getting the degree.

8. The appellant was of the view that there was no requirement that the two years experience should be after obtaining the Masters degree in agriculture. The appellant undoubtedly had such experience before obtaining his M.Sc. degree in agriculture.

9. Since the appellant was not called for the interview he filed OA. No. 1045/97 before the Central Administrative Tribunal, Chennai. By an interim order the Tribunal allowed the appellant to appear in the interview. Subsequently the Tribunal in its final order dated 23.6.2000 observed that since the appellant had been interviewed in pursuance of the interim order of the Tribunal, no further direction is required to be given in this connection and the result of the interview should be published. Accordingly the result was published and since the appellant was found first in the merit list, he was appointed as Deputy Director (Agriculture) on 23.3.2001, and has been working as such since then.

10. Aggrieved, writ petition was filed by the respondents herein before the Madras High Court which allowed the writ petition and quashed the appointment of the appellant. Hence this appeal by way of Special Leave Petition.

11. One of the reason given by the High Court for setting aside the appellant's appointment was that the Tribunal should have gone into the question of eligibility of the appellant herein. Instead of doing so, it disposed off the O.A. filed before it by directing the UPSC to publish the result. Accordingly, the appellant herein was appointed by the Government of Pondicherry vide order dated 23.3.2001 on the post of Deputy Director (Agriculture).

12. We need not go into the question whether the Tribunal should have decided the case on merits since we are deciding it on merits.

13. The High Court in the impugned judgment has also observed that it was open for the UPSC to restrict the number of candidates to be called for the interview by adopting a short-listing method. The High Court was of the view that there was no irrationality or illegality in the method of short-listing adopted by the UPSC. With respect, we cannot agree.

14. In paragraph 3.1 of the advertisement of UPSC dated 23.5.1998, it is stated :

"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 either qualifications and experience higher than the minimum prescribed in the advertisement or on the basis of the experience higher than the minimum prescribed in the advertisement or on the basis of experience in the relevant field, or by holding a screening test. The candidate should, therefore, mention all the qualifications and experience in the relevant field over and above the minimum qualifications and should attach attested/self certified copies of the certificates in support thereof."

15. It is well settled that the method of short-listing can be validly adopted by the Selection Body vide *Madhya Pradesh Public Service Commission vs. Navnit Kumar Potdar and another* \026 1994(6) SCC 293 (vide paras 6, 8, 9 and 13), *Government of Andhra Pradesh vs. P. Dilip Kumar and another* \026 1993(2) SCC 310, etc.

16. Even if there is no rule providing for short-listing nor any mention of it in the advertisement calling for applications for the post, the Selection Body can resort to a short-listing procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of short-listing can be resorted to by the Selection Body, even though there is no mention of short-listing in the rules or in the advertisement.

17. However, for valid short-listing there have to be two requirements \026 (i) It has to be on some rational and objective basis. For instance, if selection has to be done on some post for which the minimum essential requirement is a B.Sc. degree, and if there are a large number of eligible applicants, the Selection Body can resort to short-listing by prescribing certain minimum marks in B.Sc. and only those who have got such marks may be called for the interview. This can be done even if the rule or advertisement does not mention only those who have the aforementioned minimum marks, will be considered or appointed on the post. Thus the procedure of short-listing is only a practical via-media which has been followed by the courts in various decisions since otherwise there may be great difficulties for the selecting and appointing authorities as they may not be able to interview hundreds and thousands of eligible candidates; (ii) If a prescribed method of short-listing has been mentioned in the rule or advertisement then that method alone has to be followed.

18. In the present case, no doubt, the UPSC had resorted to an objective and rational criteria that only those who have two years experience after getting the M.Sc. degree will be considered, while those who have got such experience but only before getting the M.Sc. degree will not be called for the interview. Ordinarily we would not have taken exception to this procedure since it is based on an objective criteria, and ordinarily this Court does not interfere with administrative decisions vide *Tata Cellular vs. Union of India* AIR 1996 SC 11. As observed in the said decision, the modern approach is for courts to observe restraint in administrative matters.

19. Hence, if the method of short-listing had not been prescribed by the UPSC or in a statutory rule, it is possible that the argument of learned counsel for the respondents may have been accepted and we may not have interfered with the method of short-listing adopted by the UPSC since it appears to be based on a rational and objective criteria.

20. However, in this case we have noticed that in paragraph 3.1 of the advertisement of the UPSC dated 23.5.1998, the method of short-listing has been given. Hence the UPSC cannot resort to any other method of short-listing other than that which has been prescribed in paragraph 3.1. In the said paragraph of the advertisement, it is mentioned that the Commission may restrict the number of candidates on the basis of either qualifications and experience higher than the minimum prescribed in the advertisement or on the basis of the experience higher than the minimum prescribed in the advertisement or on the basis of experience in the relevant field. In other words, it was open to the UPSC to do short-listing by stating that it will call only those who have Ph.D. degree in Agriculture (although the essential degree was only M.Sc. degree in Agriculture). Similarly, the UPSC could have said that it would only call for interview those candidates who have, say, five years experience, although the essential requirement was only two years experience. However, experience after getting the M.Sc. degree cannot be said to be higher than the experience before getting the M.Sc. degree. Also, the advertisement dated 23.5.1998 does not mention that two years experience must be after getting the M.Sc. degree.

21. Learned counsel for the appellant has shown us several advertisements issued by the Union Public Service Commission in which it was specifically mentioned that experience must be after getting the post-

graduate degree. However, in the present case, the advertisement does not mention that the two years experience must be after getting the M.Sc. degree in Agriculture. Hence, we cannot add words to the advertisement and we must read it as it is.

22. As observed by this Court in *Ramana Dayaram Shetty vs. The International Airport Authority of India and others* \026 AIR 1979 SC 1628 (vide para 10):

" It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Vitarelli vs. Seaton* (1959) 359 US 535; 3 L Ed 2nd 1012 where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its actions to be judged\005\005. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that binds such agency, that procedure must be scrupulously observed\005\005 This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword".

This Court accepted the rule as valid and applicable in India in *A.S. Ahluwalia vs. State of Punjab* (1975) 3 SCR 82: (AIR 1975 SC 984) and in subsequent decisions given in *Sukhdev vs. Bhagatram* (1975) 3 SCR 619; (AIR 1975 SC 1331), Mathew, J. quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanating from Article 14 does not rest merely on that Article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution but evolved it purely as a result of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-541 in Prof. Wade's *Administrative Law* 4th Edn. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law."

23. Had paragraph 3.1 not been in the advertisement of the UPSC it is possible that we may have taken a view in favour of the respondents since in that case it was open to the UPSC to resort to any rational method of short-listing of its choosing (provided it was fair and objective). However, in the present case, a particular manner of short-listing has been prescribed in paragraph 3.1. Hence, it is not open to the UPSC to resort to any other method of short-listing even if such other method can be said to be fair and objective.

24. For the reasons given above, this appeal is allowed. The impugned judgment of the High Court is set aside. The appellant has been working as Deputy Director (Agriculture) since 2001 in pursuance of the judgment of

the Tribunal and the interim order of this Court, and we uphold his appointment. No costs.

JUDIS